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ABATEMENT.

Where the defendant in an action of malicious prosecution dies while an appeal from a judgment in his favor is pending, the action abates. *Clark* v. *Carroll*, 338.

ACCORD.

1. Where accord was to do a thing in satisfaction at future day, performance must be *accepted* in satisfaction of debt or claim. *Johnson* v. *Hunt*, 777, *and note.*

2. Parol release of judgment for money, in consideration of payment of less sum, invalid, though indorsed upon execution. *Weber* v. *Couch*, 682.

3. Agreement in writing not to take any proceedings or judgment in consideration of payment of specific sum for which judgment was rendered in instalments, which were duly paid, is without consideration, and will not prevent plaintiff issuing execution for interest. *Beer* v. *Foakes*, 748.

ACCOUNT. See PARTNERSHIP, 8.

If two executors purchase land with trust funds, and it does not appear that persons interested in estate are debarred by acquiescence or otherwise from availing themselves of advantage of purchase, one executor cannot maintain a bill in equity against the other for account and share of profits. *Bowen* v. *Richardson*, 338.

ACTION. See ATTACHMENT, 2. COMMON CARRIER, 15. DAMAGES, 9. FRAUDS, STATUTE OF, 3. INTOXICATING LIQUOR, 3. NEGLIGENCE, 14. PARTNERSHIP, 1, 2. RAILROAD, 13. TENDER.

1. Where landlord with consent of tenants sold their share of crop with his own, and afterwards brought action for non-acceptance, his not owning all, neither constitutes a defence nor diminishes damages. *Davis* v. *Harness*, 214.

2. Declaration charging defendants with fraudulently and falsely selling goods of his own fabrication as manufacture of plaintiff, by which plaintiff was deprived of sales, sets forth actionable injury. *Tobacco Manufactory* v. *Commerce*, 542.

3. Case for deceit will not lie against person for obtaining credit by falsely and fraudulently representing himself to be "a person safely to be trusted and given credit to:" the false representations must consist of definite statements of fact. *Lyons* v. *Briggs*, 619.

4. SURVIVAL OF ACTIONS, 353, 425.

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ADMINISTRATOR. See EXECUTOR.

ADMIRALTY. See ATTACHMENT, 1. CRIMINAL LAW, 17. ERRORS AND APPEALS, 9. SHIPPING, 3.

I. *Generally.*

1. Part owners of vessel are tenants in common, and statement of one of them in another suit as to amount of damage, is not evidence against the others. *Clark* v. *Weeks*, 139.

2. Under sect. 941 Rev. Stat., judgment against both principal and sureties in stipulation, executed thereunder, to release vessel against which process has issued, may be recovered at time of rendering decree in principal cause. *In Matter of Warden*, 748.

3. *Quære*, Whether decree is lien on real estate of stipulators after appeal. *Id.*

4. Master can neither sell nor hypothecate cargo, except in case of urgent necessity, and lender is chargeable with notice of facts on which master appears to rely as justification for his act. *Bank* v. *Brigantine*, 619.

5. Cargo-owner finding vessel, with his cargo on board, at port of refuge, needing repairs which can not be effected without cost to him of more than he would lose by taking his property, and paying vessel all lawful charges, may pay charges and reclaim property. *Id.*

6. Where vessel before she breaks ground, is so injured by fire that cost of repairs would exceed her value when repaired, and she is rendered unseaworthy, a contract of affreightment for carriage of cotton by her to foreign port, evidenced by ordinary bill of lading, providing for payment of freight money, on delivery of cotton, is thereby dissolved, so that shipper is not liable for any part of freight money, nor for expenses paid by vessel for compressing and stowing the cotton. *Ellis* v. *Ins. Co.*, 415.

7. Libellant in suit in rem growing out of a collision, claimed $27,000 damages. After attachment of vessel in District Court, a stipulation in sum of $2100, as her appraised value, was given. Libel having been dismissed by Circuit Court on appeal, libellant appealed to U. S. Supreme Court: *Held*, that matter in dispute did not exceed $5000, as required by sect. 3 of Act of February 16th 1875. *Starin* v. *Schooner Jesse Williamson, Jr.*, 476.

8. Decree against vessel for $27,000 would not establish liability of claimant to respond for that amount *in personam*, unless he was owner at time of collision, which fact must appear by record to authorize court to consider $27,000 as value of matter in dispute on such appeal. *Id.*

II. *Collision.*

9. Where both parties are in fault, damage is divided equally, and decree is in favor of the one suffering most for half the difference between the losses. Practice in such cases. *Reynolds* v. *Vanderbilt*, 69.

ADMIRALTY.

10. Statute of Limited Liability does not apply to such a case until balance of damage has been struck. *Reynolds* v. *Vanderbilt*, 69.

11. *Quære*: Must benefit of statute be claimed in pleadings? *Id.*

12. Where libellant's injury has arisen from fault of two vessels, damages are apportioned equally between them, and decree should be for one-half against each; any balance of unrecovered half to be enforced against the other. *Sterling* v. *Peterson*, 140.

13. Ocean steamer starting from crowded slip should have look-out at stern, and use towage if necessary to avoid injury. *Id.*

AGENT. See ACTION, 2. ATTACHMENT, 10. BILLS AND NOTES, 3, 10. CONTRACT, 10. CORPORATION, 12. EQUITY, 14. INSURANCE, 1, 2, 8, 11, 15. MUNICIPAL CORPORATION, 5. RAILROAD, 12.

1. That lessee takes lease executed under seal, for unnamed principal, but in his own name, will not render unnamed principal liable for rent. *Borcherling* v. *Katz*, 748.

2. If vendor elect to give exclusive credit to husband, whom he knows to be purchasing for his wife, he cannot afterwards recover from wife as principal; but vendor ignorant of existence of principal can afterwards recover from him. *Miller* v. *Watt*, 338.

3. In absence of express authority or custom of trade, agent furnished with funds cannot bind principal by purchase upon credit. *Kamarouski* v. *Krumdick*, 140.

4. Agent to solicit orders has no implied authority to receive payment. *McKindly* v. *Durham*, 140.

5. Order solicited by such agent is a mere proposal to be accepted or not, as principal may see fit. *Id.*

6. The words "agents not authorized to collect," stamped in large legible print on face of bill, are notice not to pay agent. *Id.*

7. Where agent enters into contract without disclosing his principal or agency, if principal takes advantage of contract, he must do so subject to all rights and equities of which other party, who had no knowledge of agency, might avail himself as against agent, assuming him to be principal. *Miller's Ex'rs* v. *Sullivan*, 476.

8. Where agent commits tort while acting within scope of his employment, he and employer may be sued separately or jointly; and it does not matter in what proportions, if any, they share the benefits. *Coal Co.* v. *McCulloh*, 476.

9. Cases in which head employee has been held not liable for trespasses of workmen under him, are distinguishable from those where tort is in consequence of command or neglect of general superintendent. *Id.*

10. Broker not entrusted with possession of property, contracted in his own name to sell same to vendee, who had no knowledge that broker was not real owner, but dealt with him as such. Broker notified principals that he had sold for them, and directed where to ship property. Owners, without knowledge of how broker had contracted, and without conduct clothing broker with authority to receive payment or any possession, actual or constructive, of property, delivered same to vendee. *Held*, payment to broker no bar to recovery by owners. *Crosby* v. *Hill*, 683.

ALIMONY. See HUSBAND AND WIFE, I.

ANNUITY. See APPORTIONMENT.

APPORTIONMENT.

A. and wife conveyed their farm to B., husband of granddaughter, in consideration of his agreement, secured by bond and mortgage on premises, to pay A. annuity of $250 on 1st of April, for life, and if wife survived, to pay her an annuity of $200 for life. A.'s wife outlived him. *Held*, that her annuity was apportionable. *In re Iron Co.*, 748.

ARBITRATION. See PARTNERSHIP, 10, 11.

Award based on statements made by each party not set aside on bill filed

ARBITRATION.
by one alleging drunkenness at time of reference and statement, where proof shows he was capable of acting intelligently. *O'Neil* v. *Rodgers*, 214.

ARREST. See EXTRADITION, 1.

ASSIGNMENT. See ATTACHMENT, 8. BANK, 2. BILLS AND NOTES, 16. CORPORATION, 2, 3. ESTOPPEL, 3. LANDLORD AND TENANT, 1. PARTNERSHIP, 3.

1. Delivery of savings bank book as collateral security transfers an equitable title to deposit superior to subsequent attachment. *Toft* v. *Bowker*, 70.

2. Assignment for benefit of creditors who should release, with reservation of surplus to assignor, is fraudulent and void as to creditors not releasing. *Lawrence* v. *Norton*, 258, *and note.*

3. Statutes allowing preferences among creditors should be strictly construed, and assignments creating such preferences held void, when not in strict compliance with terms of law. *Id.*

4. Assignee for benefit of creditors under state law not "legal representative" of assignor under sect. 30 of National Currency Act of 1864, providing for a recovery of twice the amount of interest in case of usury. *Barnet* v. *Bank*, 70.

5. Provision in contract that if contractor fails to pay for labor and materials, other contracting parties may withhold moneys earned under contract and pay same, does not deprive contractor of right of alienation, and his assignees will be entitled to moneys earned under contract in order in which they acquired title. *Shannon* v. *Mayor*, 748.

6. Statute required assignee for benefit of creditors to sell all the assigned property at public auction within 120 days. *Held*, that deed authorizing the assignee to sell at private sale, at his discretion as to time and manner, was void. *Jaffray* v. *McGehee*, 344.

7. Insolvent guardian, who had misappropriated his ward's money, within six months before filing of petition in insolvency against him, in order to prefer his ward, deposited his own money in his name as guardian. *Held*, that his assignee could maintain bill in equity to recover amount, although ward was ignorant of misappropriation and insolvency. *Bush* v. *Moore*, 344.

8. Two debtors made an assignment: one was subsequently discharged in bankruptcy, and the other removed from the state. Afterwards a creditor, who had accidentally failed to become a party to assignment, sought to do so by bill in equity. *Held*, that although trustees had funds sufficient to pay him same dividend which had been paid to other creditors, he could not do so. *Bank* v. *Smith*, 214.

9. Not void because it does not direct payments *pro rata* in case there be not enough to pay in full. Unless otherwise directed by assignment, law imposes that duty upon assignee. *Lindsay* v. *Guy*, 542.

10. Where insolvent debtors have made an assignment, setting out in deed names of creditors and amounts due, persons so named are *cestuis que trust*, and entitled to equitable relief in case of mismanagement, waste or violation of trust by assignees. *Cohen* v. *Morris*, 543.

11. If trustee mismanages and wastes trust property, and persists in so doing, injunction and appointment of receiver is proper remedy. *Id.*

12. In such a case as above, where debt is undisputed, creditor, although his claim is not reduced to judgment, may assail assignment as fraudulent, and may seek to set it aside as to property obtained from him by fraudulent representations with which assignees are connected. *Id.*

13. Whether on final hearing complainants can both attack assignment as fraudulent and claim under it, not decided. *Id.*

ASSUMPSIT.
When contract for building has not been so performed as to justify recovery thereon, the value of the work and materials can only be recovered in assumpsit when owner has actually accepted building, which is not necessarily implied by mere occupation thereof. *Bozarth* v. *Dudley*, 140.

ATTACHMENT. See ASSIGNMENT, 1. MORTGAGE, 1.

1. Wages of seamen on coasting voyage on Atlantic coast subject to. *White* v. *Dunn*, 808.

2. Mortgagee of goods attached, while in possession of mortgagor, by invalid attachment, may maintain replevin against attaching officer. *Allen* v. *Wright*, 808.

3. Money held under invalid attachment may be recovered of attaching officer in action for money had and received. *Id.*

4. Lien acquired by attachment of easily removable property is lost by neglect to retain possession. *Thompson* v. *Baker*, 141.

5. Where attachment is only of interest of co-tenant, sale of whole article is unlawful. *Id.*

6. Officer may break into shop or other building not connected with dwelling-house, in order to serve process of attachment, provided he first asks admission, if any person is present to grant it, and is refused. *Clark* v. *Wilson*, 415.

7. He is not obliged to first seek elsewhere for chattels to attach. *Id.*

8. Assignment in good faith of wages to be earned under existing contract, is valid against subsequent garnishment, provided garnishee have such notice of assignment as will enable him to disclose it in his affidavit. *Tiernay* v. *McGarity*, 620.

9. Levy of attachment for debt of grantor upon lands fraudulently conveyed gives lien which is not disturbed by decree setting aside conveyance and subjecting property to sale for payment of judgment recovered after levy. *McKinney* v. *Bank*, 70.

10. B.'s funds on deposit in bank were attached. The bank, as garnishee, showed that deposit was in name of "B., agent;" and that it knew nothing of any principal. It appearing that no one had, as principal, ever claimed the deposit, *Held*, that bank was liable as garnishee. *Proctor* v. *Greene*, 416.

11. The Maryland Act of 1876, ch. 285, prescribed a mode in which the claimant, by filing petition and giving bond, might procure discharge of property levied on. *Held*, 1. That upon trial of issue joined upon such claim, the question of damages as well as right of property is to be settled. 2. That petition need not in terms claim damages. 3. That requirement by said act of a bond in "double the appraised value," &c., necessitates an appraisement wherever there is claim. 4. That taking bond in less than amount prescribed, does not defeat claimant's recovery nor prevent inquiry of damages. *Turner* v. *Lytle*, 339.

12. Whether claimant, knowing of levy and seizure, is compelled to resort to this method of asserting his rights, *quære?* *Id.*

ATTORNEY. See EVIDENCE, 4.

1. Is liable for fees for service and entry of his writs, and neither serving officer nor clerk is required to perform the services without prepayment. *Tilton* v. *Wright*, 466, *and note.*

2. Compromise of suit by attorney with apparent authority binds client, unless so unfair as to put other party on inquiry or imply fraud. *Black* v. *Rogers*, 70.

3. May contract for contingent fee, and such agreement does not make him party to action, or render evidence admissible of his personal treatment of opposite party. *Gilchrist* v. *Brande*, 620.

4. Where property is conveyed to attorney in trust, without his professional advice, and he mortgages same for purpose of raising money which he claims is due him from *cestui que trust*, and afterwards sells the property and appropriates proceeds to his own use, he cannot be summarily disbarred, but injured party must be left to his remedy by suit. *People* v. *Appleton*, 476.

5. In exceptional cases attorney's misconduct in his private capacity may be of so gross a character as to require his disbarment. *Id.*

AUCTION SALES. See AUCTION SALES, 1.

AWARD. See LIMITATIONS; STATUTE OF, 10.

BAIL.

Where bail in criminal case could not reasonably anticipate and prevent

BAIL.
default, and with proper diligence find and surrender his principal after default before death, proper case is made for court, in its discretion, to relieve surety. *State* v. *Traphagen*, 543.

BAILMENT.
1. Plaintiff delivered bonds to bank and received this writing: "Received of J. D. Whitney $4000 for safe keeping as special deposit. J. M. Waite, C." *Held*, that bank was only liable for *fraud* or *gross* negligence. *Whitner* v. *Bank*, 683.
2. Facts that safe was left open during transaction of business; that there was no gate in passageway from rear of banking-room behind counter, and that only one person was left in charge of bank about noon each day, do not seem so unusual as to be accounted negligence, much less gross negligence. *Id.*

BANK. See BAILMENT. NATIONAL BANKS.
1. Is under no obligation to pay any sum on check payable to drawer's order, and by him assigned, when drawer has not sufficient funds in bank to pay check in full. *Coates* v. *Preston*, 477.
2. Three days after an assignment for benefit of creditors the assignors gave a check, dating it four days before the assignment. Bank, with knowledge of assignment, paid check on day it was given. *Held*, that bank was put on inquiry, and that payment of check was not a defence as to assignee. *Chaffe* v. *Bank*, 477.
3. One buying stock of bank from the bank, is entitled to rely upon assurances of officer of bank as to its financial condition, and if already a stockholder, is not bound to avail himself of his right to examine the books of the bank; but a representation that stock is worth $100 per share is mere expression of opinion. *Bank* v. *Hunt*, 477.
4. National bank purchasing its own stock to protect itself from loss, is bound to sell same within six months, and may sell on credit, taking note with stock as collateral. *Id.*
5. Abuse of corporate powers not sufficient defence to such a note. *Id.*

BANKRUPTCY.
Debt contracted and payable in Canada, by resident of state to resident of Canada, not barred by discharge under U. S. Bankrupt Act, when foreign creditor neither proved debt, nor in any way was party to proceedings, nor had personal notice thereof. *McDougall* v. *Page*, 683.

BILL OF LADING. See SHIPPING, 1.

BILL OF PARTICULARS. See PRACTICE, 3.

BILL OF REVIEW.
The time during which Circuit Court has no control over decree in consequence of pendency of an appeal, does not run against two year limit for bringing bill of review. *Ensminger* v. *Powers*, 418.

BILL OF SALE.
Signature to by mark, good without witness. *Larkin* v. *City*, 214.

BILLS AND NOTES. See CHECK. CRIMINAL LAW, 13. EVIDENCE, 18. GUARANTY. HUSBAND AND WIFE, 16. LIMITATIONS, STATUTE OF, 8. MECHANICS' LIEN. UNITED STATES COURTS, 4.
I. *Form, consideration, &c.*
1. Promissory note, payable "on demand, or in three years from this date," with interest "during said term, or for such further time as said principal sum or any part thereof shall remain unpaid," not negotiable. *Mahoney* v. *Fitzpatrick*, 339.
2. To render defendant liable on note, he must have been aware at time of signing same, or possessed opportunities, such as a reasonable, cautious man would have exercised, of knowing that he was signing note for payment of money, as represented by paper. *Kogel* v. *Toten*, 478.
3. Mere addition of word "agent" does not release drawer of bill from porsonal liability. *Bank* v. *Cook*, 215.

BILLS AND NOTES.

4. In action on promissory note it was alleged that sole consideration was debt to payee, which he had voluntarily discharged. *Held*, it appearing from agreed facts that "release" had been given, presumption was that it was valid in form. *Carver* v. *Bank*, 215.

5. Debt voluntarily released not sufficient consideration. *Id.*

6. The conclusion "witness our hand and seal" in printed blank does not alone make note sealed instrument; nor will mere attaching seal or scroll without some recital. *Brooks* v. *Kisers*, 141.

7. The following instrument held negotiable: "Sixty days after date I promise to pay C. Toler or order, $150, at either bank in the city of Augusta, Ga., for one end spring top buggy, harness, whip and mat, this day delivered to me, upon the distinct understanding that the title was not to pass me until paid for in full, and he is authorized to take possession of same at any time until fully paid for." *Howard* v. *Simpkins*, 141.

8. In action upon non-negotiable promissory note, payable to third person or bearer, plaintiff offered to show that when defendant gave him the note, he told defendant it should be in his name or to his order, and that defendant replied "It is all right, it makes no difference, it is payable to bearer and you can collect." *Held*, inadmissible. *Whitwell* v. *Winslow*, 808.

9. Promissory note for certain amount, payable to person named or bearer "with interest the same as savings bank pay," is not negotiable. *Id.*

10. In action on following note: "For value received as treasurer of the town of Monmouth, I promise to pay D. M. Ross or order $160, in one year from date with interest. Wm. G. Brown, treasurer," it was not shown or claimed that treasurer was authorized by the town to issue the note on its behalf. *Held*, that note must be regarded as note of Brown. *Ross* v. *Brown*, 416.

11. One who signs instrument for payment of money only (whether negotiable or not), leaving amount blank, and intrusts it to another with authority to fill blank with agreed sum, will, as to third persons without knowledge, be bound by act of person to whom instrument was entrusted, although he fills blank with larger sum than was agreed. *Harvester Co.* v. *McLeane*, 543.

12. So *held* where figures $45 were in upper left hand corner when note was signed, and it was delivered with understanding that $45 should be filled in body of note, and note was made for $450. *Id.*

13. Figures in corner were no part of note and unauthorized change in them did not vitiate it. *Id.*

14. One who takes note of debtor for amount of debt then past due, especially if signed or endorsed by third person, and payable at future day, will be presumed to extend time for payment of debt until day fixed in note, and such extension makes creditor innocent holder for value. *Id.*

II. *Rights of Parties.*

15. Payee of lost note, negotiable and payable to him or bearer, can only get relief in equity. *Adams* v. *Edmunds*, 683.

16. Maker of note, transferred after it is due, sued in name of transferree, can only plead defences existing between himself and payee growing out of note transaction. *Armstrong* v. *Noble*, 808.

17. Drawee without funds who pays bill, is entitled to be reimbursed; and several drawers, some securities for others, are alike liable to reimburse drawee in absence of contrary understanding. *Church* v. *Swope*, 71.

18. Where C., at time of execution, puts his name on back of bill payable to S., he becomes, as to drawee, a drawer. *Id.*

III. *Endorsement, acceptance, &c.*

19. In no case payment unless expressly so agreed; and marking account "paid" and signing same before protest, does not constitute such an agreement. *Weaver* v. *Nixon*, 141.

20. Endorser of paid note or bill is liable as upon new contract, and no notice or demand is necessary to fix his liability; he impliedly warrants that it is a subsisting obligation, genuine, and not tainted by illegal consideration. *Airy* v. *Nelson*, 416.

BILLS AND NOTES.

21. To render writer of letter of credit liable, either upon implied acceptance of, or agreement to accept, drafts taken on faith of letter, drafts must be taken for valuable consideration. *Sherwin* v. *Brigham*, 477.

22. Promise to have drafts discounted, and to take up notes on which persons taking drafts are liable as indorsers, not a valuable consideration. *Id.*

23. If letter provides that drafts drawn under its authority shall be used only for purpose of being discounted at particular bank, persons taking such drafts with notice that they have been offered to the bank for discount and refused, cannot recover thereon. *Id.*

24. Where negotiable draft with security thereon was drawn and accepted by drawees, who held mortgage to secure advances, and received property of drawer sufficient to pay draft, after negotiation acceptors were absolutely bound, drawer was bound to pay if acceptors did not, and his security was equally liable with him. As to holder, acceptors may be regarded as makers and drawer as first endorser. *Parmelee* v. *Williams*, 749.

25. Where indulgence was granted to acceptors in consideration of payment of eighteen per cent. interest, and acceptors became insolvent, security was released. *Id.*

IV. *Presentment, &c.*

26. Presentment and protest of foreign bill must be according to law of place where payable. *Pierce* v. *Indseth*, 215.

27. Court will take judicial notice of notary's seal. Impression on paper by die with which ink is used, sufficient. *Id.*

BOND.

1. One not named in but signing bond may be held as an obligor, if an intention to so charge him clearly appear. *Partridge* v. *Jones*, 71.

2. Voluntary obligation on sufficient consideration, not contravening policy of law or repugnant to some statute, is valid at common law, notwithstanding attempt may have been to execute it pursuant to statute with terms of which it does not strictly comply. *Barnes* v. *Brookman*, 808.

BROKER. See AGENT, 10. CONTRACT, 16, 17.

Right of to recover advances on illegal contract. *Norton* v. *Blinn*, 783, *note.*

CASES AFFIRMED, COMMENTED ON, OVERRULED, ETC.

Castellain *v.* Preston, 168 (L. R., 8 Q. B. Div., 613); reversed. *Castellain* v. *Preston*, 769.

Erskine *v.* Adeane, L. R., 8 Ch. App. 756, disapproved. *Morgan* v. *Griffith*, 145.

Gaylord *v.* Imhoff, 26 Ohio St. 317, distinguished. *Mortley* v. *Flanagan*, 77.

Gillet *v.* Railroad Co., 55 Mo. 315, overruled. *Boogher* v. *Association*, 72.

Locke *v.* Williamson, 40 Wis. 277; Bonnell *v.* Jacobs, 36 Id. 59; Pearson *v.* Martin, 28 Id. 265; Merriam *v.* Field, 39 Id. 578; Moorehouse *v.* Comstock, 42 Id. 630, distinguished. *Olson* v. *Mayer*, 287.

Lyons *v.* Providence Washington Ins. Co., 13 R. I. 347, reversed. *Lyons* v. *Providence Washington Ins. Co.*, 419.

McLain *v.* Simington, 37 Ohio St. 484, followed and approved. *Partridge* v. *Jones*, 71.

Nicholson *v.* G. W. Railroad Co., 5 C. B. (N. S.) 436, distinguished. *Hays* v. *The Penna. Co.*, 39.

Plevin *v.* Hershall, 25 E. Ch. 21, distinguished. *Morgan* v. *Kidder*, 693.

Smith *v.* Barclay, 21 Am. Law Reg. 408, overruled. *Barclay* v. *Smith*, 435.

Sprague *v.* Rhodes, 4 R. I. 301, affirmed. *Gorton* v. *Tiffany*, 418.

Thompson *v.* Ins. Co., 104 U. S. 258, distinguished. *Ins. Co.* v. *Doster*, 60.

Union Ins. Co. *v.* Chipp, 93 Ill. 96, referred to. *Pierce* v. *People*, 623.

CAVEAT EMPTOR. See JUDICIAL SALE.

CHARITY.

1. English doctrine as to superstitious uses has never been adopted in this

CHARITY.
country, and is inconsistent with the religious liberty guaranteed by our constitutions. *Kehoe* v. *Kehoe*, 655, *and note.*

2. A., "for the purpose of founding an institution for the education of youth in St. Louis county, Missouri," granted property to B. and his successors in trust "for the use and benefit of the Russell Institute of St. Louis, Missouri," with directions to sell and account and pay proceeds, "to Thomas Allen, president of the board of trustees of the said Russell Institute," whose receipt should be a full discharge. *Held*, a valid charity, though institution neither established nor incorporated in lifetime of donor or Allen. *Russell* v. *Allen*, 339.

3. Georgia code provides that "no person leaving a wife or child, or descendants of a child, shall by will devise more than one-third of his estate to any charitable, religious, educational or civil institution, to the exclusion of such wife or child; and in all cases the will containing such devise shall be executed at least ninety days before the death of the testator, or such devise shall be void." *Held*, not to invalidate charitable devise contained in will executed within ninety days of death, *unless* testator leaves wife or child, or descendants of a child. *Jones* v. *Habersham*, 478.

CHATTEL MORTGAGE. See MORTGAGE, I.

CHECK. See BANK, 1

CITY. See MUNICIPAL CORPORATION.

CIVIL RIGHTS. See CONSTITUTIONAL LAW, 21.

COLLATERAL SECURITY. See PLEDGE.

COLLISION. See ADMIRALTY, II.

COMMON CARRIER. See CONSTITUTIONAL LAW, 17. RAILROAD, 3, 5.

1. Is insurer of goods at common law, and contract of exemption from such liability, must be founded upon some consideration. *Taylor* v. *R. R. Co.*, 416.

2. Liable for baggage checked to point beyond and lost after leaving its own line, of passenger to whom it has sold coupon ticket. *R. R. Co.* v. *Weaver*, 128.

3. In such a case liability of defendant not affected by payment made by or release given to the other companies. *Id.*

4. Is not liable in trover to consignor for surrendering goods entrusted to him for carriage, to officer, who attaches them upon legal process against consignee. *French* v. *Trans. Co.*, 808.

5. Common carrier, in such case, is not liable to consignor, after notice by him to hold goods, for not notifying officer or taking steps to stop goods *in transitu*. *Id.*

6. Freight discrimination, based solely on the amount shipped, are contrary to public policy; disfavored party can recover excess with interest. *Hays* v. *The Penna. Co.*, 39, *and note.*

7. State law to prevent discrimination in rates from point within to point without the state is not a regulation of commerce within the Federal Constitution. *People* v. *Railway Co.*, 71.

8. Regulation entitling persons purchasing tickets before entering cars to discount, is reasonable, and does not violate statute prescribing equal rates to all. *Swan* v. *Railroad*, 71.

9. Passenger ejected for non-payment of fare not entitled to carriage in same train to station beyond, by tendering fare from station at which he was ejected. *Id.*

10. Contract that in case of loss, carrier shall pay specified sum will not, without expressly so stipulated, relieve carrier from liability for full value of goods lost through its negligence. *Black* v. *Goodrich Trans. Co.*, 141.

11. Non-delivery of goods and admission that same are lost are presumptive evidence of negligence. *Id.*

12. Receiving goods for transportation beyond its own line only responsible as forwarder, in absence of special contract. *Railroad Co.* v. *Myrick*, 215.

13. Receipt stated goods to be "consigned" to parties beyond terminus; and, after describing property, it added "for transportation * * * to the warehouse at ——— " on margin was "*Notice.—See rules of transportation on

COMMON CARRIER.
the back hereof." These rules stated that company would only act as forwarder. On margin of receipt was notice that it might be "exchanged for a through bill of lading." *Held*, not a through contract. *Railroad Co.* v. *Myrick*, 215.

14. What constitutes contract of carriage question of *general* law. *Id.*

15. Actions against common carrier for breach of contract of carriage and delivery of goods may be either *ex contractu* or *ex delicto;* but same law is applicable, and measure of damages is equally a question of law in either case. *Railroad Co.* v. *Pumphrey*, 478.

16. As general rule measure of damages in such cases is value of goods at place of destination, with compensation for actual loss, which is natural and proximate consequence of act; loss sustained by plaintiff in general business is not within. *Id.*

17. Common carriers deliver property at their peril; it is their duty to be diligent to secure delivery to person entitled, and they can refuse delivery until reasonable evidence is furnished that party claiming is party entitled. *Id.*

CONDITIONAL SALE. See SALE, 4. TROVER, 3.

CONFLICT OF LAWS. See COMMON CARRIER, 14. CORPORATION, 22. INSOLVENT LAW, 5. MUNICIPAL CORPORATION, 7.

1. Contract of married woman, made in one state and valid there, is to be held valid in another state. *Holmes* v. *Reynolds*, 620.

2. Bond was executed in New York to indemnify against loss on bond entered into in Louisiana; a pre-existing liability entered into without request was sole consideration, and was by law of Louisiana sufficient, by that of New York insufficient; *Held*, that the law of Louisiana governed. *Pritchard* v. *Norton*, 72.

3. Divorce in one state where jurisdiction depends entirely upon residence there of party applying, at suit of husband against wife residing in another state, who was not personally served and did not appear, but was ignorant of action until after judgment, is not a bar to a subsequent action by wife in her state for divorce, alimony, &c., especially where first judgment was based upon alleged cause, false in fact. *Cook* v. *Cook*, 142.

CONSIDERATION. See BILLS AND NOTES, 4, 14, 21. COMMON CARRIER, 1 CONTRACT, 18, 19, 21. CRIMINAL LAW, 13. ERRORS AND APPEALS, 8. GIFT, 3. INTEREST, 3. HUSBAND AND WIFE, 11.

Part payment of note after maturity no valid consideration for extension of time. *Petty* v. *Douglass*, 488.

CONSTITUTIONAL LAW. See COMMON CARRIER, 7. CRIMINAL LAW, 27. EMINENT DOMAIN. INSOLVENCY, 4. INSURANCE, 1. MUNICIPAL CORPORATION, 9, 14, 20. PILOTAGE, 1. UNITED STATES, 3, 4. USURY, 1. WILL, 14.

1. Act prohibiting manufacture or sale of oleomargarine, &c., constitutional. *State* v. *Addington*, 683.

2. State enactments regulating commerce between states not unconstitutional unless conflicting with regulations of congress on same subject. *Id.*

3. For the purpose of promoting public welfare, legislature has power to regulate or forbid sale of patented articles, to same extent as articles not patented, if no discrimination is made. *Palmer* v. *State*, 684.

4. Defendant was authorized by charter granted in Illinois, to run ferry between St. Louis and East St. Louis; one of incorporating acts provided "that the ferry established shall be subject to the same taxes as are now, or hereafter may be, imposed on other ferries within this state and under the same regulations and forfeitures." *Held*, that ferry, having only one landing in Illinois, was subject to same taxation as ferries wholly within the state; and that most that can be claimed is that company is exempt from other taxation and exactions than such as were imposed on like property similarly situated. *Ferry Co.* v. *East St. Louis*, 684.

5. There was proviso in charter that nothing therein should interfere with police power of municipal corporations. *Held*, that imposition of license fee

CONSTITUTIONAL LAW.

of $100 per boat by city of East St. Louis was within the proviso, and was not a regulation of commerce or duty of tonnage within U. S. Constitution. *Ferry Co.* v. *East St. Louis*, 684.

6. Enrolment and licensing of boats under U. S. laws did not exclude right to impose license in question. *Id.*

7. 1st and 2d sections of Civil Rights Act, passed March 1st, 1875, are unconstitutional as applied to states. *U. S.* v. *Stanley*, 790.

8. Fourteenth Amendment is prohibitory upon states only, and under it congress can only pass legislation *corrective* of state laws or acts. *Id.*

9. Thirteenth Amendment relates only to slavery and involuntary servitude: the denial of equal accommodations in inns, public conveyances and places of public amusement imposes no badge of slavery or involuntary servitude, but at most infringes rights which are protected from state aggression by Fourteenth Amendment. *Id.*

10. Whether congress, under commercial power, may pass laws securing to all persons equal accommodations on lines of public conveyance between two or more states, undecided. *Id.*

11. Constitution does not require that title of act should contain synopsis of law, but that act should contain no matter variant from title. *Howell* v. *State*, 749.

12. State officers cannot be compelled by courts, as against political power of state, to levy and collect certain annual tax, and apply same to payment of certain debts of state, in accordance with its contracts. *State* v. *Jumel*, 749.

13. Changes in form of action and modes of proceeding do not amount to impairment of contract, if adequate and efficacious remedy is left or substituted. *Antoni* v. *Greenhow*, 749.

14. Legislature possesses every power not delegated to some other department, or expressly denied to it by constitution. *Winch* v. *Tobin*, 809.

15. Act providing that court of chancery may hear and determine bills to quiet title, &c., where lands are unimproved and unoccupied, is not in violation of constitutional guaranty of trial by jury. *Gage* v. *Ewing*, 809.

16. Where jurisdiction is bestowed upon court of chancery in case where there existed before adoption of constitution a remedy at law, under which was given right of trial by jury, it is presumed such a trial would be allowed, if asked, on trial in chancery. *Id.*

17. Act of the state legislature to control and regulate shipment of freight to points in other states is unconstitutional. *Carton* v. *R. R. Co.*, 373, *and note.*

18. Inter-state contract of shipment is entire, and such laws as above, of state where made, do not enter into it. State may regulate charges on shipments of goods, by statutes not unconstitutional as regulations of commerce, and, in absence of congressional legislation, such laws cannot be regarded as encroaching on authority of general government. *Id.*

19. Such regulations of commerce only as impose burdens and restrictions are forbidden. *Id.*

20. When municipal corporation enters into contract, legislature cannot impair its taxing power, as to such contract, nor right to mandamus to compel exercise of such taxing power in favor of the contractor. *Assessors* v. *State*, 142.

21. Sec. 5519 Rev. Stat. making criminal a conspiring or going in disguise "for the purpose of depriving, either directly or indirectly, any person or class of persons of the equal protection of the laws," &c., is unconstitutional. *United States* v. *Harris*, 280.

22. An inspection law within art. 1, sect. 10 of the Constitution of the U. S., need not provide for inspection as to quality of article to be exported: not unconstitutional if inspection extends only to form and dimensions of package. *Turner* v. *State*, 198, *and note.*

23. State may lawfully, by such inspection law, require articles to be brought to state warehouses to be inspected. *Id.*

24. Imposition upon such article, when exported, of tax to meet expenses of inspection not unlawful discrimination between state buyer and exporter. *Id.*

25. Whether it is not exclusively the province of congress to decide whether duty under inspection law is excessive, *quaere*. *Id.*

CONSTITUTIONAL LAW.

26. State statute imposing tax on every passenger from foreign country, landing in port of New York, who is not United States citizen, and holding vessel which brings him liable for tax, is unconstitutional. *New York* v. *Compagnie Generale*, 544.

27. In absence of legislation by congress, state has full power to legislate in regard to rivers within its borders, and also to exercise all necessary police regulations. This latter power embraces the construction of roads, canals, bridges, &c., and can be exercised more wisely by states than by distant authority. *Transportation Co.* v. *Chicago*, 544.

28. When state's power is exercised so as unnecessarily to obstruct navigation of river, congress may interfere and remove obstruction. *Id.*

29. Constitution of Georgia provides that "the General Assembly shall have no power to grant corporate powers and privileges to private companies, except, &c. * * * But it shall prescribe by law the manner in which such powers shall be exercised by the courts." *Held*, not to take away power to amend charters of existing corporations. *Jones* v. *Habersham*, 479.

30. One state cannot create a *controversy* with another state within meaning of that term as used in judicial clauses of Constitution of United States, by assuming prosecution of debts owing by another state to its citizens. *New Hampshire* v. *Louisiana*, 479.

31. Constitution of New Jersey provides: "To avoid improper influences which may result from intermixing in one and the same act such things as have no proper relation to each other, every law shall embrace but one object, and that shall be expressed in the title." *Held*, that the powers, however varied and extended, which a new township may exercise constitute but one object which is fairly expressed by title showing nothing more than legislative purpose to establish such township. *Montclair* v. *Ramsdell*, 480.

32. An act authorizing individual to dispose of his property by lottery, notwithstanding general statute prohibiting, under penalty, such a lottery, is not violation of provision of Bill of Rights that no man is entitled to exclusive public emoluments or privileges, but in consideration of public services. *Commonwealth* v *Whips*, 443, *and note.*

33. The word "privilege" in Bill of Rights means public privilege, and not mere privilege for exercise of private right. *Id.*

34. Right to grant such privileges in absence of such a constitutional provision as above. *Id., note.*

35. While Georgia constitution provides that private property shall not be taken or damaged unless compensation be first paid, yet where owner permitted company to build its road through his land and appropriate timber thereon without objection until entire road had been completed, his property forming but a small fraction thereof, he could not then enjoin use of entire road until he is paid. *Griffin* v. *Railroad Co.*, 340.

36. Statute imposing upon life insurance companies annual excise tax, "to be determined by assessment of the same upon a valuation equal to the aggregate net value of all policies in force on the 31st day of December then next preceding, issued or assumed by such corporation or association, and held by residents of the Commonwealth, at the rate of one-half of one per cent. per annum," is constitutional. *Ins Co.* v. *Commonwealth*, 340.

37. A. was sentenced to twenty-five years' imprisonment on his plea of guilty of murder in second degree, which sentence was, on his appeal, reversed and set aside. At time of commission of homicide this conviction was an acquital of murder in the first degree, but that law was changed before the plea of guilty. *Held*, that new law was, as to this case, *ex post facto*, and that A. could not be again tried for murder in the first degree. *King* v. *State*, 340.

38. Distinction between retrospective laws, affecting remedy or mode of procedure and those operating directly on the offence, held unsound where, in latter case, they affect to his serious disadvantage any substantial right which accused had under law as it stood when offence was committed. *Id.*

CONTEMPT. See PROHIBITION, 3.

CONTRACT. See ADMIRALTY, 6. ASSIGNMENT, 5. ASSUMPSIT. BILL OF SALE. COMMON CARRIER, 10, 13. CONFLICT OF LAWS, 1, 2. CONSTITU-

CONTRACT.

TIONAL LAW, 12, 13, 18. CORPORATION, 23. DEBTOR AND CREDITOR, 1. DEED, 4. DURESS, 1. EQUITY, 4, 16. EVIDENCE, 12. INSURANCE, 15. INTEREST, 1. MASTER AND SERVANT, 3, 4. PILOTAGE, 3, 4. RAILROAD, 9. RESCISSION. SHIPPING, 2. TELEGRAPH. USURY, 2. WILL, 8.

1. Release from contract to marry good consideration for promise to pay money. *Snell* v. *Bray*, 142.

2. Where reward is offered with no restrictions, one who performs the act with a view of obtaining the reward need not give notice of that fact to person making offer, as a condition precedent to recovery. *Reif* v. *Page*, 142.

3. Fireman rescuing a person at great peril is not precluded from claiming reward on ground that act was in line of his duty. *Id.*

4. Non-patentable improvement is not subject of exclusive property. *Albright* v. *Teas*, 750.

5. Covenant by which covenantor restrains himself, generally and absolutely, from exercising his skill and knowledge, is void. *Id.*

6. Agreement for valuable consideration, to interfere to bring about marriage between others, is void. *Johnson* v. *Hunt*, 777, *and note.*

7. Where there has been failure to do the thing in alternative agreement to do or pay, the money must be paid. *Pennsylvania Railroad Co.* v. *Reichert*, 72.

8. Breach of to support another for life, where such that it may be treated as absolutely broken, entitles to damages for whole value of contract. *Parker* v. *Russell*, 216.

9. Agreement to extend time for payment, if interest be paid in advance, and security given, requires tender of interest and security to avail defendant. *Williams* v. *Wright*, 143.

10. If agent of one of parties has, in prosecution of illegal enterprise for his principal, received money or other property belonging to his principal, he is bound to turn it over. *Norton* v. *Blinn*, 783, *and note.*

11. Where plaintiff received a more expensive press than he supposed he had ordered, but, it being late in the season, and his customers pressing him, set the press up and used it, *Held*, that he had accepted it. *Dennis* v. *Stoughton*, 810.

12. When it is intention of parties that there shall be no delivery of the commodities, but that transactions shall be adjusted and settled by payment of differences, such contracts are void. *Cobb* v. *Prell*, 609, *and note.*

13. It is duty of courts to scrutinize very closely contracts for future delivery, and if circumstances throw doubt upon question of intention of parties, it is not too much to require party claiming rights under such contract to show affirmatively that it was made with view to actual delivery. *Id.*

14. Money placed in hands of third person by vendor and purchaser of lands, under agreement to pay out of it assessments and taxes, can not be recovered by vendor upon procuring assessment to be set aside. Such agreement held to be for indemnity of purchaser against liability to pay for improvement. *Cross* v. *Hayes*, 544.

15. By written contract plaintiffs agreed to finish two stores, "and also to finish *front part of the basement*, with the stairway going up to the second story, and also the outside two cornices." In action to recover for extra work on inside of front basement wall, *held*, that extrinsic evidence was admissible to aid in construction of contract, and that upon such evidence, it was for jury to determine whether work in question was covered thereby. *Bedard v. Bonville*, 544.

16. Evidence that overwhelmingly large proportion of all contracts for sale of produce at Chicago Board of Trade, are mere settlements of differences, not sufficient to justify jury in presuming that such was nature of transaction in any particular case. *Rountree* v. *Smith*, 416.

17. Where plaintiffs do not sue on such contracts but for services as brokers and money advanced, though it is possible they might, under some circumstances, be so connected with immorality of contract as to be affected by it if proved; they are certainly not in same position as party suing for enforcement of original agreement. *Id.*

18. Agreement to pay sum to heir at law, who gets nothing by will, in consideration of his forbearing to contest, by executor whose wife and daughter

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are legatees, is valid, if heir can show he honestly thought he had good and reasonable ground for making claim, and honestly and in good faith intended to oppose will: he is neither bound to allege or prove undue influence. *Bellows* v. *Sowles*, 810.

19. Where corporation is formed and succeeds to business of partnership and, as part of consideration of business and assets of firm, assumes its debts and liabilities, the promise to pay such debts is founded on sufficient consideration, and firm creditor may maintain action against corporation, especially when continued in same employment out of which debt arose. *Lithographing Co.* v. *Kerting*, 809.

20. Several insurance companies united in resisting claims made on their respective policies, and appointed a committee "with full power and authority to employ counsel and attorneys to appear for said companies and each thereof." Each company was to pay its proportion of costs, fees and expenses, and committee was authorized to make *pro rata* assessments. *Held*, that attorney employed by said committee could not hold companies jointly liable for his fees. *Ins. Co.* v. *Treadwell*, 620.

21. Where plaintiff was misled by selectman of town into supposing that notice of injuries received by him through insufficiency of highway, might be given in thirty instead of twenty days, and gave the notice outside of the twenty but within the thirty days; and at a legally warned meeting of voters of town, plaintiff presented his claim, insisting that defect in notice could not be taken advantage of, and thereupon town voted to pay him $200. *Held*, that there was no consideration for vote. *Gregg* v. *Town*, 810.

22. Contract for employment of salesman for series of years, provided that he should be paid for his services annually a sum equal to one-fifth of net profits of business, which sum it was guaranteed should not be less than $7500. The contract further provided for deducting total expense and losses from gross profits, for charging the house ten per cent. and interest on certain goods manufactured elsewhere, and that salesman was not to be regarded as partner. *Held*, that in absence of special agreement or custom to contrary, employers could not charge in expense account interest on temporary loans. *Selz* v. *Buel*, 281.

23. In such a case the compensation of salesman will not be estimated as part of the expenses to be deducted from the gross profits. *Id.*

COPYRIGHT. See INJUNCTION, 8.

CORPORATION. See CONSTITUTIONAL LAW, 29. CONTRACT, 19. DEBTOR AND CREDITOR, 2. EQUITY, 8. EVIDENCE, 4. LIBEL, 1. MASTER AND SERVANT, 10. RAILROAD. REMOVAL OF CAUSES, 3, 4.

1. Can be sued for malicious prosecution. *Boogher* v. *Association*, 72.

2. May assign for benefit of creditors. *Schockley* v. *Fisher*, 72.

3. But insurance company, after it has violated insurance laws, cannot thus withdraw itself from control of insurance department. *Williams* v. *Ins. Co.*, 73.

4. Single stockholder can only sue to protect property of, after refusal of directors so to do. *City* v. *Dean*, 216.

5. Volunteer fire company though chartered, had no stock, and its property was acquired by donation. Only compensation of members was relief from jury and militia duty. Member died, and fifteen years afterwards his heirs claimed an interest in fund arising from sale of company's property. *Held*, that they had no right to participate in fund, before or after dissolution of corporation. *Mason* v. *Fire Co.*, 216.

6. Corporation *de facto*, trading and obtaining credit as such, is estopped from denying its charter and name, especially after judgment. *Ice Co.* v. *Porter*, 216.

7. Conversion of corporation *de facto* into one *de jure*, does not exempt property held in latter character from liability to obligations of former. *Id.*

8. Private corporation, where creditors not affected, may in good faith and without fraud, purchase its own stock, and hold, reissue or retire the same. *Clapp* v. *Peterson*, 72.

9. Creditors of corporation have lien in equity on capital stock, which will avail them except as against holders who have taken it *bona fide* for valuable consideration, and without notice. *Id.*

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10. Creditor cannot hold as partners members of company with which he has dealt as corporation, both parties believing it to be so. *Bank* v. *Padget*, 143.

11. It must appear in record of judgment against foreign corporation which has not appeared, that it was engaged in business in this state. *St. Clair* v. *Cox*, 143.

12. Business corporations are liable for frauds and wrongs of agents, as individual principals would be in like circumstances. *Railroad Co.* v. *Bank*, 750.

13. Sale to corporation may be rescinded where credit therefor was given on strength of false and fraudulent contemporaneous representations of officers as to its solvency and prosperity. *Cardy* v. *Rubber Co.*, 750.

14. Joint stock company has no inherent right to remove directors appointed for definite period, before expiration thereof. *Hotel Co.* v. *Hampson*, 750.

15. If articles of association contain no power to remove directors before expiration of period of office, but authorize shareholders, by special resolution, to alter any of the articles, there must be special separate resolution altering articles so as to give power to remove directors before resolution of removal can be passed. *Id.*

16. Charter, read in connection with general laws, is measure of powers of corporation, but whatever, under these, may fairly be regarded as incidental to objects for which corporation is created, is not to be taken as prohibited. *Railroad Co.* v. *Steamboat Co.*, 281.

17. Charter of street railway company, silent as to character of motive power, will be intended as giving right to use the kind most conducive to best interests and safety of public, and, at time of passing charter, in ordinary use. *Railway Co.* v. *Town of Lake View*, 417.

18. Where foreign corporations engage in business in state whose laws provide that they may be summoned by process served upon agent in charge thereof, they are "found" in district where agent is doing business, within the meaning of Act of Congress of March 3d 1875, and may be served in that manner in suits brought in United States courts. *McCoy* v. *Railroad Co.*, 725.

19. Where shares of capital stock are issued to original subscribers as full paid, and are sold as such, purchaser in good faith cannot be held liable to creditor of corporation in value of stock, as for unpaid instalments. *Brant* v. *Ehlen*, 341.

20. Corporation may receive in payment of shares, any property which it may lawfully purchase, and so long as transaction stands unimpeached for fraud, courts will treat as payment what parties have so regarded, and this, too, in cases where rights of creditors are involved. *Id.*

21. By state statute, stockholders of corporation at its dissolution are liable for its debts; but it is provided that no person holding stock as collateral security shall be so liable. *Held*, 1. That pledgees of the corporation are within the exemption. 2. That certificates, absolute on their face, issued to creditor as collateral or in trust, may be shown to be so held by evidence *in pais*. 3. That voting on such stock does not estop holder from showing that he only holds it as collateral. *Burgess* v. *Seligman*, 341.

22. The state court, after the transaction arose, and after the Circuit Court had decided the case, made a contrary decision against same stockholders, holding that pledgees of the corporation were liable. *Held*, That U. S. Courts are not bound to follow the decision of the state court. *Id.*

23. Agreement of one stockholder with another, in consideration of money, to vote for certain person as manager, and for increase of salaries, is void, unless assented to by all the stockholders; whether valid, if so, *quære?* *Woodruff* v. *Wentworth*, 342.

24. Granting clause of deed, record of which was offered in evidence, was as follows: "Know all men by these presents that the W. R. Land Company, by S. H. president, and T. S. C. secretary, * * * has granted," &c. Attestation clause and signatures were: "In witness whereof, we hereunto subscribe *our* names and affix *our* seals." Signed "S. H., president, (Scroll); T. S. C., secretary (Scroll); W. K. Land Company (Scroll)." Certificate of acknowledgment stated that S. H., president, and T. S. C., secretary, "ac-

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knowledged that they executed and delivered the same as their voluntary act and deed." *Held*, that one of seals would be presumed to be seal of corporation and that deed was deed of corporation. *City of Kansas* v. *Railroad Co.*, 684.

25. S. conveyed to C. certain property upon special trust to secure debts of S., and subsequently transferred to C. his stock in Q. Co. as "pledge and collateral security" to secure performance by S. of conditions of trust deed; after breach of these conditions, C. filed bill in equity asking for receiver and alleging mismanagement through which it had become impracticable to sell stock pledged for sum commensurate with its value. *Held*, that C., as pledgee of majority of stock for benefit of the S. creditors, was equitable creditor and entitled to protection of court, and that the thing in litigation was not the stock itself but the property of the Q. Co. *Chafee* v. *Quidnick Co.*, 545.

COSTS. See EXECUTORS AND ADMINISTRATORS, 1. JUDGMENT, 1.

CO-TENANTS. See ATTACHMENT, 5.

COUNTY. See MUNICIPAL CORPORATION.

COURTS. See INJUNCTION, 2. PROHIBITION, 1. RES ADJUDICATA.
It is present, not past interest that disqualifies a judge. *Johnson* v. *Railroad*, 545.

COVENANT. See DAMAGES, 4.

1. Grantee by accepting deed becomes liable on covenants just as if he had signed and sealed it. *Sparkman* v. *Gove*, 143.

2. Covenant by grantee to assume mortgage for which grantor is liable binds him to pay mortgage debt, and the damages recoverable are the full amount of debt, although not yet paid by plaintiff. *Id.*

3. Action may be maintained for breach of covenant *against liability* without alleging or proving damage, but in covenant *against damage* because of liability, such damage must be proved. *Griswold* v. *Selleck*, 545.

4. Agreement by purchaser of land to assume incumbrance implies, at most, a covenant of indemnity against damage resulting from breach. *Id.*

5. Agreement under seal between adjoining owners to build party wall, when executed, gives to each an easement for support which passes by conveyance of premises. *Roche* v. *Ullman*, 73.

6. Conveyance was subject to "conditions" against erection of certain buildings. *Held*, that they were to be construed as *restrictions*, and constituted breach of covenant against encumbrances in subsequent deed. *Ayling* v. *Kramer*, 217.

CRIMINAL LAW. See BAIL. CONSTITUTIONAL LAW, 21, 37. ERRORS AND APPEALS, 4. EXTRADITION. FALSE IMPRISONMENT. INTOXICATING LIQUORS, 2, 4–8. JURY, 1. PARENT AND CHILD. REMOVAL OF CAUSES, 8. STATUTE, 4.

I. *Generally.*

1. Persons aiding or abetting should be indicted in same form as principals. *State* v. *Hessian*, 143.

2. *Onus* of proving alibi is upon accused and it must be clearly established. *Garrity* v. *People*, 811.

3. Burden of proof not changed by attempt to prove *alibi*, and if by reason thereof, jury entertain reasonable doubt, they should acquit, though not able to find that *alibi* was fully proved. *Walters* v. *State*, 685.

4. Witness not the sole judge whether question may tend to criminate him; court must see reasonable ground for apprehending danger. *Ex parte Reynolds*, 21, *and note.*

5. Where statute provides for both fine and imprisonment and one of penalties is omitted, error will not afford ground of reversal. *Dillon* v. *State*, 217.

6. Under a statute making it an offence "to sell *or* give away," an indictment charging that defendant "did sell *and* give away," is good. *State* v. *Pittman*, 342.

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7. If defendant testify, his relation to the case may be considered by the jury. *State* v. *Sanders*, 342.

8. The court may, but is not bound to, receive a verdict of guilty on one count, without any finding as to the others. *Jackson* v. *State*, 342.

9. Parties to recognizance are presumed to know when and where term will commence, and recognizance omitting the word "next" used in statute in speaking of term, will not be invalid. *Jedlicka* v. *The State*, 342.

10. Power of Supreme Court of the United States to review judgments in criminal cases is limited to single question of power of lower court to commit prisoner for act of which he has been convicted. *Ex parte Curtis*, 144.

11. Conviction in Mayor's court under municipal ordinance for disturbing peace, will not protect against subsequent prosecution by state for assault and battery, though same transaction be involved in both cases. *De Graffenreid* v. *State*, 751.

12. Where city policeman was slain, and mayor and council employed counsel to prosecute slayer, this was not sufficient to disqualify all grand and traverse jurors residing within corporate limits, on ground that they would be liable to taxation to satisfy attorney's fees. *Doyal* v. *State*, 546.

13. Person over sixty is not qualified juror; although such a one may not have made known his age until jury was impaneled, he may then be excused, although defendant may have exhausted all challenges but one in order to secure such person on jury. *Id.*

14. Where defendant in criminal case, who had been convicted of misdemeanor and sentenced to pay specified fine or serve ninety days in chain gang, procured two others to give their promissory note in satisfaction thereof, and such note was accepted by solicitor-general as equivalent of cash, consideration was not illegal. *Blaine* v. *Hitch*, 546.

15. At common law only attorney-general could enter *nolle pros.* upon indictment, and in New Jersey, there being no statute upon subject, power is still reposed in attorney-general or several prosecutors of pleas; but, under long established practice in this state, indictment after it passes under control of court, may not be discharged without consent of court. *State* v. *Hickling*, 546.

16. Peremptory power of court, where common law prevails, is never exerted, upon representative of state to discharge indictment, in whole or in part, at instance of parties. This can only be done where such power is conferred upon court by statute. *Id.*

17. Bonds on board a British ship lying in river and moored to shore at Rotterdam were stolen, and prisoners, British subjects, were found dealing with them in England, and were tried at Central Criminal Court and found guilty of feloniously receiving the same knowing them to have been stolen. *Held*, assuming bonds to have been stolen by foreigner or other person not being one of crew, that admiralty had jurisdiction over the offence, and that prisoners were properly tried in England. *Regina* v. *Carr and Wilson*, 299, *and note.*

II. *Burglary.*

18. It is not indispensable to trace fruits of crime to possession of accused. *Garrity* v. *People*, 811.

19. Finding of money, goods or other property, which were in house at time of burglary, soon thereafter, in possession of person who is unable to account for his possession, raises a presumption of guilt and jury could convict on this alone. *Lundy* v. *State*, 751.

III. *Conspiracy.*

20. Indictment charged conspiracy on part of two directors of national bank to procure declaration of dividend with knowledge that bank had made no net profits. *Held*, the declaration of dividend by association is not wilful misapplication of its funds by individual directors. It is act done by them as officers and not in their individual capacity. There being no crime under sect. 5209 of Rev. Stat. U. S., there could be no valid indictment under sect. 5440. *United States* v. *Britton*, 545.

IV. *Larceny.*

21. It is larceny to bring goods stolen in one state into another, but the

CRIMINAL LAW.
thief cannot be indicted in latter state for original theft. *Worthington* v. *State*, 73.

V. *Murder.*
22. Homicidal mania must be proved by evidence which "fairly" preponderates. *Coyle* v. *Commonwealth*, 191, *and note.*
23. An attempt at suicide is not of itself evidence of insanity. *Id.*
24. Where, at and before killing, there was a great riot by a mob which accused took part in, incited and was in great part responsible for, he was liable for each and every illegal act committed by such mob, and what was said and done by mob or any of its members, was proper evidence on trial of defendant. *McRue* v. *State*, 751.
25. To justify homicide on the ground of self defence it must appear that it was absolutely necessary to kill the deceased in the slayer's opinion, founded on good reason; and also, either that deceased was the assailant or that slayer had really endeavored to decline further struggle before mortal blow. *Heard* v. *State*, 342.

VI. *Perjury.*
26. Emolument returns and account for services rendered to United States, of clerk of circuit and district court, sworn to before district judge, is "written declaration" or "certificate," within meaning of sect. 5392 Rev. Stat. *United States* v. *Ambrose*, 685.
27. Indictment against officer of national bank under sect. 5392, Rev. Stat. U. S., for wilfully false declaration or statement in report made under sect. 5211, verified by oath, administered by *notary public* of state, prior to Act of 1881, cannot be sustained. *United States* v. *Curtis*, 546.

VII. *Political assessments.*
28. The Act of Congress of August 15th 1876, prohibiting political assessments is constitutional. *Ex parte Curtis*, 144.

VIII. *Sunday tippling.*
29. It makes no difference in law whether place be called bar room, glee club, parlor or restaurant, if liquor is retailed and tippled there on Sabbath day, with door for entrance, so that anybody can enter and drink, proprietor is guilty of keeping open tippling house on Sunday, and drinking may be done standing or sitting, at bar or around the table. *Hussey* v. *State*, 217.

CROPS. See SHERIFF'S SALE, 2.

CUSTOM. See FIXTURES, 7. INSURANCE, 10, 12, 31. NUISANCE, 1.

CUSTOMS DUTIES. See UNITED STATES, 2.

DAMAGES. See ADMIRALTY, 9; COMMON CARRIER, 16; LIBEL, 1: MALICIOUS PROSECUTION, 5; NEGLIGENCE, 13; PRACTICE, 1; RAILROAD, 6, 7.
1. Sum of money in gross, to be paid for non-performance of contract is, as general rule, to be considered as penalty and not liquidated damages. *Smith* v. *Wedgwood*, 417.
2. True measure of, for breach of contract to sell and deliver fruit jars, where part only were delivered, is difference between contract price and market value at time and place fixed for delivery. If such articles can not be had in market where they were to have been delivered, they may be bought in nearest market and cost of transportation added. *Capen* v. *De Steiger Glass Co.*, 417.
3. Where contract contemplated an immediate shipment of press, and shipper gave wrong directions as to timbers needed in setting it up, *Held*, that he was liable for all damages resulting directly and naturally from his delay and erroneous directions, but not for loss of custom. *Dennis* v. *Stoughton*, 810.
4. In covenant against grantor by grantee who had been evicted by paramount title, parties having agreed on value of land, and eviction having occurred within period of limitation for actions of trespass, four years, and no action for mense profits having been brought, *Held*, that plaintiff was entitled to interest on agreed value for four years prior to entry of judgment. *Iron Works* v. *Turner*, 547.
5. Grantor had been notified to defend ejectment suit, but neither defended

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nor notified grantee that he would not do so. *Held*, that grantee should recover his reasonable expenses and counsel fees in defending ejectment. *Iron Works* v. *Turner*, 457.

6. Where article is purchased for shipment abroad, and the fact was shown on face of contract, and known to vendor, and vendee could not discover inferiority of article fraudulently substituted by vendor's employees until it reached its destination, measure of damages is difference between market price of article contracted for, at date of arrival, and price realized upon sale, together with costs and expenses of sale. *Oil Co.* v. *Schlens*, 343.

7. In action by vendee against vendor such damages as are the natural and proximate result of breach need not be particularly stated. *Id.*

8. In action for timber cut and carried away, measure of damages is: 1. Where defendant is wilful trespasser, full value of property at time and place of demand or suit brought. 2. Where defendant is unintentional trespasser, or his innocent vendee, value at time of conversion, less what labor and expense of defendant and his vendor have added. 3. Where defendant is purchaser, without notice of wrong, from wilful trespasser, value at time of purchase. *Wooden Ware Co.* v. *U. S.*, 677.

9. At trial of action of contract for breach of agreement to carry plaintiff from S. to N., it appeared that he bought a proper ticket; that conductor refused to receive same, and, at intermediate station, being a railroad police officer, arrested plaintiff for evading his fare, and delivered him to police officers, who detained him during the night. *Held*, that the detention, discomforts, consequent illness, and indignities suffered at hands of police officers were not elements of damage in this action. *Murdock* v. *Railroad*, 217.

DEBTOR AND CREDITOR. See ASSIGNMENT, 8, 10, 12. INSURANCE, 22. MUNICIPAL CORPORATION, 18. TRUST AND TRUSTEE, 6.

1. In case of contract merely *malum prohibitum* value of property received for unauthorized purpose may be recovered. *City* v. *Brown*, 281.

2. Certificates of membership in board of trade are not property and can not be subjected to payment of debts by creditor's bill. *Barclay* v. *Smith*, 435, *and note.*

3. Law only requires donee to take such possession as nature of property admits of in order to protect it against attachment by creditors of donor. *Ross* v. *Draper*, 811.

4. Statute of 13th Elizabeth, ch. 5, embraces creditors and "all others who have cause of action, or suit, or any penalty or forfeiture, and embraces actions of slander, trespass and other torts." *Welde* v. *Scotten*, 343.

5. Judgment creditor in action of trespass can attack conveyance of defendant as fraudulent. *Id.*

6. A gift by husband to wife embracing all grantor's property will not be held void, at least unless it is shown to be more than a reasonable provision. *Wood* v. *Broadley*, 343.

7. Novation is substitution of one debtor for another, or substitution of new obligation for old one which is thereby extinguished; the new contract must be a valid one upon which creditor can have his remedy. *Guichard* v. *Brande*, 620.

8. Payment, to constitute defence, must be of money or something accepted in its stead. Valid obligation can not be paid or satisfied by transfer of forged securities. *Id.*

9. To create estoppel by admission of payment it must appear that person setting up estoppel was induced by admission to do something to his prejudice if admission be withdrawn. *Id.*

10. Where difference between price paid and actual value is apparent and great, conveyance will be regarded as voluntary to extent of difference. *Strong* v. *Lawrence*, 144.

11. If debtor is insolvent when judgment is rendered, his insolvency will be considered as extending back beyond voluntary conveyance made during his indebtedness, unless contrary be shown. *Id.*

12. Conveyance by insolvent to daughter-in-law, in consideration of amounts owed as her guardian, is valid, and creditors can not compel him to set off

DEBTOR AND CREDITOR.
amounts furnished by him for maintenance and support of her and her husband. *Comfort* v. *Bearden*, 218.

13. A., treasurer of R. I. company and agent of Mass. company, and B., home agent of latter company, arranged to transfer accounts so that debt of A. to Mass. company and one of B. to R. I. company should be cancelled by B. paying excess in cash. Before arrangement was consummated, A. received notice that B.'s agency was revoked, and B. never completed arrangement by paying. *Held*, that R. I. company could not sue A. for amount of B.'s debt to it less amount of A.'s debt to Mass. company. *Gas Burner Co.* v. *Barney*, 547.

DECEDENTS' ESTATES. See EXECUTORS AND ADMINISTRATORS.

DECEIT. See ACTION, 3.

DEED. See CORPORATION, 24. COVENANT, 1. ESTOPPEL, 1. EVIDENCE, 17.

1. Grantor may at any time revoke deed placed in hands of A. with directions to deliver it on grantor's death. *Hale* v. *Joslin*, 811.

2. Deed cannot be delivered to grantee or obligee as an escrow, to take effect upon condition not appearing on its face; the delivery must be to stranger. *McCann* v. *Atherton*, 621.

3. Deed signed by B. with A.'s name, in A.'s presence, and under A.'s direction, is deed of A. *Goodell* v. *Bates*, 417.

4. If one whose name is signed by another to deed, so far acknowledges same as to induce third persons to act on it as his, he may, without evidence in writing of an estoppel, be held precluded from subsequently denying the deed. *Id.*

5. Granting clause conveyed "all the stone coal lying and being in, under and upon certain premises," in consideration of thirty cents per ton on all coal mined, and second party bound themselves to mine at least 3000 tons annually, but had the right "to abandon the contract at any time." *Held*, 1. All mineable coal passed to grantees. 2. No interest therein remained in grantor subject to be mortgaged as land. 3. A mortgage upon the remaining interest of grantor did not cover purchase-money due or to become due from purchasers of coal. *Edwards* v. *McClurg*, 344.

6. A. owning unimproved lot over which projected to extent of foot, eaves of adjoining house owned by B., conveyed to B. by deed in execution of which B. did not join, strip of land so overhung. Deed stipulated that it was made and accepted upon express condition and reservation that A. and his heirs, or owner of A.'s lot, should have right of building up to line of lot thereby conveyed, and of having two windows looking out on said lot "which windows shall not be hindered or obstructed in any way by said B., his heirs or assigns, to any other or greater extent than such windows if so erected could be obstructed by the house of B., at present standing on his said lot." *Held*, that deed only entitled A. to have unobstructed by buildings, for benefit of his windows, the one foot strip conveyed by deed. *Cooper* v. *Louanstein*, 738, *and note*.

7. Per BEASELEY, C. J.—Deed not executed by grantee but accepted by him containing grant of easement in lands of grantee, such lands not being passed by conveyance, is not to be regarded with respect to grant of easement as deed of grantee. *Id.*

DEMURRER. See FIXTURES, 2.

DESCENT. See WILL, 9.

DETAINER. See TRESPASS, 1.

DEVISE. See WILL.

DIVIDENDS. See INSURANCE, 32.

DIVORCE. See HUSBAND AND WIFE, I.

DOMICILE.

1. In Constitution of Rhode Island, "residence" means domicile; hence where citizen had domicile in town of L., but temporarily resided elsewhere, he had right to vote in town of L. *State* v. *Aldrich*, 621

DOMICILE.

2. Foreigner without parents, kept her trunks, &c., at her brother's house in a certain county, and seemed to regard it as a home, returning there when sick or out of employment. *Held*, that it was the county of her residence. *County* v. *County*, 144.

3. Where it is shown that person resides at certain place at certain time, ordinary presumption is that it was a continuing residence. How long such presumption would last must depend on all the circumstances. *Inhabitants of Greenfield* v. *Inhabitants of Camden*, 144.

4. Voting is not conclusive evidence of residence. The act and circumstances under which vote is given are for the consideration of the jury. *Inhabitants of East Livermore* v. *Inhabitants of Farmington*, 144.

DONATIO CAUSA MORTIS. See GIFT, 1.

A certificate of deposit payable to order was endorsed as follows: "Pay to Martin Basket, of Henderson, Kentucky; no one else; then not till my death. My life seems to be uncertain. I may live through this spell. Then I will attend to it myself. H. M. Chaney." Chaney then delivered the certificate to Basket, and died. *Held*, not a valid *donatio causa mortis*. *Basket* v. *Hassell*, 344.

DRUNKENNESS. See ARBITRATION.

DURESS.

1. Where party seeks relief from obligation of contract on ground of duress, regard will be had to age, sex and condition of life, and evidence is admissible to show that person subjected to duress had heard that person threatening was of violent disposition. *Jordan* v. *Elliott*, 181, *and note*.

2. Mere vexation and annoyance, leading to execution and acknowledgment of conveyance in trust for grantor and his heirs, insufficient to establish such duress as to avoid the deed, unless it be further shown that a state of insanity was thereby produced. *Brower* v. *Callender*, 282.

3. Where agent of company had collected money and failed to return it, and another agent demanded the amount and threatened prosecution unless it was secured, and mortgage was given for same, *Held*, that if mortgage was given to settle or suppress criminal prosecution, it could not be collected; if given to secure what defaulting agent owed, it could. *Wheaton* v. *Ansley*, 751.

EASEMENT. See DEED, 5, 6.

Where owner of entire estate sells a portion, purchaser takes with the burden and benefits as they appear. *Henry* v. *Koch*, 394, *and note*. Ancient windows. *Id.*, *note*.

EJECTMENT. See DAMAGE, 5. EQUITY, 1.

ELECTION. See PARTNERSHIP, 9.

EMINENT DOMAIN.

1. Court acting upon its own knowledge of commerce and business necessities of county, must determine, upon facts stated in petition, whether the land is reasonably necessary for purpose stated. Jury can find no fact except what is just compensation. *Smith* v. *Railroad*, 481.

2. Every company seeking to condemn land for public improvement must, in modified degree, be permitted to judge for itself as to amount necessary. This right is subject to all constitutional and statutory restrictions, and to further limitation that courts can prevent any abuse of same. *Id.*

ENCUMBRANCE. See MORTGAGE.

EQUITY. See ACCOUNT. ASSIGNMENT, 8. BILLS AND NOTES, 15. CONSTITUTIONAL LAW, 15, 16. DEBTOR AND CREDITOR, 2. INSURANCE, 3. LIMITATIONS, STATUTE OF, 12, 13, 14. NATIONAL BANKS, 4. PARTITION. PARTNERSHIP, 10, 11, 13, 14. TRUST, 1. WILL, 10.

1. Will not afford relief in proper cases for action of ejectment. *Cowman* v *Colquhoun*, 811.

EQUITY.

2. *Cestui que trust* can not proceed in, merely because his interest is equitable. *Guaranty and Indemnity Co.* v. *Water Co.*, 345.

3. Refusal of new trial can not be reviewed by bill in equity to enjoin proceedings on the judgment; nor will what should have been urged in favor of the new trial, form good ground for such a bill. *Embry* v. *Palmer*, 345.

4. To reform contract for fraud or mistake equity must have *full* proof of same. *Fessenden* v. *Ockington*, 144.

5. One can not be both plaintiff and defendant in same suit at law; in such a case, remedy is by bill in equity. *Hayden* v. *Whitmore*, 282.

6. Bill in equity to enjoin trespass by felling timber, need not be brought in county where land lies. Proper venue is county of defendant's residence. *Powell* v. *Cheshire*, 214.

7. Taxes on another's land paid under mistaken belief of ownership, can not be recovered in equity. *Railroad Co.* v. *Mathers*, 73.

8. Two or more judgment creditors of corporation may unite in creditor's bill against it and stockholders to reach unpaid subscriptions, and such a bill is not multifarious. *Hickling* v. *Wilson*, 73.

9. Only interferes with action at law where there are equitable circumstances which render it unjust, as against defendant at law, that suit should proceed. *Long Dock* v. *Bentley*, 752.

10. Bill for discovery and payment into court lies against former sheriff under act providing, that all fines imposed on persons convicted of keeping houses of ill-fame, shall be divided equally between certain dispensaries of the city. *Snowden* v. *Dispensary*, 751.

11. Issue of fact from court of equity to be tried by a jury is entirely in discretion of court for informing its conscience, and is not binding upon it. It should only be allowed where proof creates doubt, never as a substitute for failure of proof or omitted evidence. *Chase* v. *Winans*, 480.

12. Bill against several defendants to set aside several distinct conveyances, made to them separately, on ground of fraud, one general right being claimed, is not multifarious. *Bobb* v. *Bobb*, 480.

13. Under laws of Illinois party may only file bill to quiet title or remove cloud from title to real property, when he is in possession thereof, or when he claims to be owner, and lands are unimproved and unoccupied. *Gould* v. *Sternburg*, 480.

14. Where one authorized by power of attorney to sell and convey lands, conveys same without consideration, owner may treat such conveyance as nullity: and having, therefore, an adequate remedy at law to recover possession by action, cannot maintain *equitable* action to have grantee declared trustee and for reconveyance. *Campbell* v. *Campbell*, 282.

15. A. filed bill to prevent B. obstructing strip of land between their estates and houses, which originally belonged one-half to estate of each, but which had become public way by fifty years' use. A. charged that only access to his back door and yard was through the way over this strip. On demurrer: *Held*, 1. That bill sufficiently charged special damage. 2. That it was maintainable to enjoin B. from obstructing strip as private way, A.'s right not being affected by public rights subsequently acquired. 3. That it was maintainable to remove the nuisance, though complainant might have other remedies, and though bill charged neither irreparable mischief nor right established at law. *Gorton* v. *Tiffany*, 418.

16. By written agreement between S. and E., each agreed to convey land to the other "subject to" an encumbrance. S. delivered to E. deed, conveying land "subject to" encumbrance, and also containing clause stating that E. assumed and agreed to pay the encumbrance as part of consideration. E., being ill, did not read clause, but discovered it after having made two payments of interest on encumbrances, and promptly brought suit to have deed reformed. In negotiations prior to agreement S., through agent, had solicited E. to assume encumbrance, but E. refused. S. understood difference between two forms of expression. Owner of encumbrance was no party to transaction, and had done nothing in reliance upon deed. *Held*, That agreement created no liability on part of E. to pay debt to D., that there was a mutual mistake in the deed and E. was entitled to have it reformed. *Elliot* v. *Sackett*, 685.

EQUITY.

17. A., who was of improvident habits and unskilled in affairs, applied to B., real estate and mortgage broker, to procure a loan, having previously had loans from him. B. prolonged negotiations for month, objecting to security offered, which was undivided interest worth some $10,000, in inherited realty, and finally loaned A. $2000 instead of $1000, sum originally requested, taking from A. note for payment of $2000, six months after date, with interest at five per cent. per month, payable monthly in advance till said principal sum is paid, and all instalments of interest to carry interest at same rate till paid. When transaction took place statute allowed parties to make their own agreement as to interest, prescribing six per cent. in absence of agreement. *Held*, That B. had taken unconscionable advantage, and that case should be referred to master to fix reasonable rate of interest not less than six per cent. *Brown* v. *Hall*, 686.

18. Bill was brought to enjoin action at law, because 1. Execution was on satisfied judgment. 2. Judgment creditor was guilty of laches in delaying to bring action. 3. Action was maliciously brought to harass and oppress. Demurrer thereto sustained. *Clark* v. *Clapp*, 686.

ERRORS AND APPEALS. See ADMIRALTY, 3, 7. CRIMINAL LAW, 10. PRACTICE, 4. REMOVAL OF CAUSES, 1.

1. Point not raised in court below will not be considered on appeal. *Wetmore* v. *Mellinger*, 711.

2. Refusal of District Court to grant certificate of probable cause in revenue prosecution, where judgment is for claimant, is not reviewable. *United States* v. *Ferrick*, 145.

3. Appeal will not lie from interlocutory order, as from order refusing to allow one to become party defendant to bill. *Young* v. *Zinc Co.*, 282.

4. Where convict escapes pending a writ of error, it is within discretion of court to hear cause while he is at large. *McGowan* v. *People*, 74.

5. Although appellant in court below claimed $3000, yet as he was there awarded $1500, matter in dispute in Supreme Court United States, required to be $2500, was but $1500. *Hilton* v. *Dickinson*, 752.

6. Decree is final for purpose of appeal, when it terminates litigation on merits, and leaves nothing to be done but enforcement by execution. *Railway Co.* v. *Express Co.*, 752.

7. Administrator may maintain appeal from order of payment on ground that it lays down rule of apportionment which works injustice as between creditors of estate. *Estate of McCune*, 481.

8. The obtaining possession of a share of the estate without further delay or litigation is sufficient consideration for waiver of appeal from decree construing will. *Mackey* v. *Daniel*, 481.

9. Where several persons with distinct interests join in libel, the *aggregate* of sums awarded is not to be considered in determining appellate jurisdiction. *In re Railroad Co.*, 73.

10. Appeal to Supreme Court United States, where there is evidence in record to sustain jurisdiction, will not be dismissed simply because upon examination of all affidavits court may be of opinion that estimates of value of matter in dispute acted upon below were too high. *Gage* v. *Pumpelly*, 621.

11. County officer subpœnaed cashier of National Bank to appear before him with his books, &c., in matter relating to tax lists. Bank filed bill in equity to enjoin auditor, which Circuit Court dismissed and bank appealed. *Held*, that appeal must be dismissed on ground that amount in controversy did not exceed $5000. *Bank* v. *Hughes*, 548.

12. Payee of two notes given in single contract brought separate actions thereon, in each of which maker interposed same counterclaim. In one, demurrer to the counterclaim was sustained, and after final judgment and writ of error, defendant prosecuted his counterclaim in other suit and accepted agreed amount therefor. These facts being by leave brought into record, *Held*, 1. That such facts occurring since final judgment may be pleaded in appellate court. 2. That foregoing facts are in legal effect a withdrawal of the counter claim. *Matthews* v. *Davis*, 345.

ESCROW. See DEED, 1.

ESTOPPEL. See CORPORATION, 4, 21. DEBTOR AND CREDITOR, 9. DEED, 2. FORMER RECOVERY, 4. INSURANCE, 23. MUNICIPAL CORPORATION, 7.

1. Recital in deed does not estop grantee from showing real consideration. *Wood* v. *Broadley*, 345.

2. Mere knowledge that one is about to purchase, does not impose on owner of equity duty of seeking him out and advising against it. *Bramble* v. *Kingsbury*, 418.

3. Blank assignment of certificates of stock with blank power of attorney to transfer on books of company, enables holder, as to persons dealing with him without notice of any defect of power in him, to use them as owner might, though legal title may not have passed, for want of transfer on books of corporation. *Otis* v. *Gardner*, 481.

EVIDENCE. See ADMIRALTY, 1. BILLS AND NOTES, 8. CONTRACT, 16. CRIMINAL LAW, 4, 19, 22, 24. DURESS, 1. GIFT, 2. INTOXICATING LIQUORS, 7. LIBEL, 2, 4–6. MALICIOUS PROSECUTION, 1, 2. PATENT, 3. TRIAL, 5. WILL, 3, 4.

1. Any one can express opinion as to speed of railway train. *Railroad Co.* v. *Johnson*, 117.

2. Conversation between parties to written contract, after execution and delivery, relating to change of some provisions, admissible. *Oakland Ice Co.* v. *Maxcy*, 418.

3. Books of science not admissible to prove opinion contained therein, but may be received to contradict witness who has referred to them as authority. *Pinney* v. *Cahill*, 104, *and note.*

4. Medical books can not be introduced in evidence, nor can expert testify as to statements made therein, nor can they be read to jury by counsel. *Boyle* v. *State*, 621.

5. Extracts from standard work on mechanics may be read to jury in action on the case to recover for injury caused by use of defective machinery. *Rolling Mills* v. *Monka*, 811.

6. Rule that witness not an expert can not testify as to his opinion, not of universal application; under certain circumstances, such witness may state his observation as to cause and effect. *Yahn* v. *City*, 644, *and note.*

7. Declaration of president of canal company about time of construction, under his direction, of certain work for use of canal, with regard to purpose of company in building it, competent evidence against company. *Halsey* v. *Railroad Co.*, 548.

8. Declaration respecting management of section of canal, made by supervisor in response to complaint concerning his management, also competent. *Id.*

9. Court can not allow party to impeach his own witness by general evidence or proof of prior contradictory statements. *Cox* v. *Eayres*, 621.

10. When deposition was excluded because witness was in court, and witness was then called, and on cross-examination testified that plaintiff about time of taking deposition, had given him shoes and liquor, *Held*, that plaintiff could repel imputation cast upon him, but could not show that witness had made prior contradictory statements. *Id.*

11. When witness is party to action court may, probably, *in its discretion*, allow broader range of cross-examination than in ordinary cases; but such latitude is not a *right* of adverse party. *Norris* v. *Cargill*, 547.

12. One who accepts employment to perform skilled labor impliedly undertakes that he possesses requisite skill, and in action for breach of contract, evidence that he represented himself as possessed of such skill is immaterial. *Id.*

13. In action for price of goods sold, upon issue whether plaintiff sent bill by mail to defendant and defendant received it, evidence is admissible that upon envelope was printed usual request to return, and that it was not returned. *Heddon* v. *Roberts*, 686.

14. If, in action of tort against two defendants, one calls other as witness, he cannot, before credibility of witness has been attacked, put in evidence that witness was without means to satisfy judgment that might be obtained against him. *Bryant* v. *Zidgewell*, 218.

15. In suit by physician to recover for services, where only testimony as to

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their value and propriety of treatment is opinion of other physicians, it is error to instruct jury that they may disregard this opinion. *Wood* v. *Barker*, 323, *and note.*

16. Opinion evidence generally. *Id., note.*

17. Before office copy can be introduced, execution and genuineness of original deed must be proved, and that all apparent means to produce the same have been exhausted. *Elwell* v. *Cunningham*, 145.

18. Evidence of what one joint maker said when he delivered note to plaintiff about signing thereof by defendant, other joint-maker, inadmissible. *Smith* v. *Wagaman*, 145.

19. In civil action where defence rests upon an alleged crime, plaintiff's guilt need not be established beyond a reasonable doubt. *Behrens* v. *Ins. Co.*, 145.

20. The quality of goods furnished can be shown by evidence of the quality of articles of same kind and quality furnished at same time to another party. *Ames* v. *Quimby*, 145.

21. The exceptions to rule that written contract shall be only evidence are, 1. Where writing is on its face incomplete. 2. Where parties in negotiating agreement have entered into another agreement by parol, collateral and on distinct subject. *Naumberg* v. *Young*, 145.

22. To justify admission of parol promise, made during negotiation of written contract, on the ground that it was collateral, it must relate to subject distinct from that of written contract. *Morgan* v. *Griffith*, 145.

EXECUTION. See ATTACHMENT, 11. SHERIFF, 3. SHERIFF'S SALE, 1.

1. No entry necessary to constitute valid levy on real estate. *Morgan* v. *Kinney*, 218.

2. Property in legal controversy cannot be seized by other judicial power than that under which it came into custody of law. *Pipher* v. *Foredyce*, 665, *and note.*

3. One partner, with consent of others, may claim separate exemption out of partnership property seized on execution against firm. *O' Gorman* v. *Fink*, 621.

4. Consent of partners that each should have and select an exemption out of partnership property, after levy, amounts to severance of joint property, and the several right of each attaches to portion he selects. A demand by each for such exemption will be deemed consent that others have same. *Id.*

5. In such case there is sufficient demand if partner informs officer making levy that he claims exemption and that other partners do the same, and asks permission to make selection, *Id.*

6. On judgment against married woman, sheriff seized her household furniture, &c. She was living with her husband, who was insolvent and contributed but little to family's support, and she had for several years almost entirely maintained him and her children. *Held*, that her right to claim exemption as "a debtor having a family residing in this state," not being clear, she was not entitled to injunction restraining sheriff from selling. *Muir* v. *Howell*, 752.

EXECUTORS AND ADMINISTRATORS. See ACCOUNT. ERRORS AND APPEALS, 7. JUDICIAL SALE. LIMITATIONS, STATUTE OF, 4. PARTNERSHIP, 5. SURETY, 2, 3.

1. Expenses of defending will which is set aside must be borne by the devisees whose interests are at stake. *Shaw* v. *Moderwell*, 74.

2. Errors in accounts of, open to correction in all subsequent accounts, except matters disputed and determined, which cannot be again questioned without leave of court. *Watts* v. *Watts*, 74.

3. Executor not liable for failure of banks in which he had deposited estate funds in his own name, adding "estate of Hassel C. Jacobus," his testator, bank being in excellent standing at time of deposit. *Jacobus* v. *Jacobus*, 752.

4. When debt due to decedent is voluntarily paid by debtor at his own domicile in state in which no admininistration has been taken out, and in which no creditors or next of kin reside, to administrator appointed in another state, and

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sum paid is inventoried and accounted for by him in that state, payment is good as against administrator afterwards appointed in state where payment is made, although this is state of decedent's domicile. *Wilkins* v. *Ellett*, 417

EXECUTORY DEVISE. See WILL, 7.

EXEMPTION. See EXECUTION, 3–6. PARTNERSHIP, 4. PENSION, 2. UNITED STATES, 1.

EXPERT. See EVIDENCE, 6.

EXTRADITION. See PROCESS, 2.
1. Person extradited under treaty of 1842 with Great Britain, cannot be detained and prosecuted for different crime than one specified in warrant of extradition. *State* v. *Vanderpool*, 686.
2. Provisions of this treaty are part of law of land, enforceable by judicial tribunals of state in behalf of person so detained and prosecuted. *Id.*

FALSE IMPRISONMENT.
1. Duty of person making or causing arrest, to convey party without delay before most convenient officer authorized to receive affidavit and issue warrant. This duty not discharged by delivering party to police officer: imprisonment under such arrest not legal beyond reasonable time for procuring warrant; what constitutes reasonable time, question for jury. *Steamship Co.* v. *Williams*, 218.
2. Object of arrest is to carry prisoner before magistrate. After warrant issued and arrest, reasonable time will be allowed by magistrate for making investigation and procuring evidence. *Id.*

FIXTURE.
1. Whether building erected on land of another with his permission, is realty, is question of fact depending on intention of parties. *Pope* v. *Skinkle*, 548.
2. Averment in pleading that building erected as dwelling-house is personalty, is issuable, and is confessed by demurrer. *Id.*
3. Pleading false on its face in essential allegation is bad on demurrer. *Id.*
4. Portable iron furnace standing on cellar floor and held in position by its own weight, and capable of being detached, with its pipes, &c., without injury to building, is not, as between mortgagor and mortgagee, a fixture. *Railway Sav. Inst.* v. *Church*, 283.
5. Machine with iron legs screwed to floor, of great weight, connected with shafting and adapted and necessary for business, but which can be moved without injury, not covered by mortgage of land. *Hubbell* v. *Bank*, 74.
6. Whether chattel becomes fixture, does not depend so much upon character of fastening as upon nature of article and its use. As between mortgagor and mortgagee tests are: 1. Real or constructive annexation of article. 2. Appropriation or adaptation to use or purpose of part of realty with which it is connected. 3. Intention of party making annexation. *Thomas* v. *Davis* 482.
7. As between landlord and tenant, evidence of custom with respect to chattels annexed to realty, by which they are treated as personalty, is admissible, but not so as to articles annexed by mortgagor or grantor before conveyance. *Id.*
8. Fixtures annexed by tenant are not chattels, unless made so by tenant's severance, or for benefit of his execution creditors. *Darrah* v. *Baird*, 532, *and note.*
9. Trover does not lie for fixtures attached by tenant, and remaining annexed to freehold, against owner of land, who has taken possession of premises. *Id.*
10. Agreement between landlord and tenant that latter may remove fixtures at end of term, does not permit him to do so thereafter. *Id.*
11. In action to recover value of certain shelving and counters, *Held*, That under evidence and instructions of court in this case, the verdict necessarily established, 1. That relation of landlord and tenant never existed between parties. 2. That shelving and drawers were erected and placed in defend-

FIXTURE.
ant's building by plaintiff under license from defendant, and under agreement that plaintiff might remove same at pleasure, and hence that they preserved their character as personal chattels of plaintiff; and further, that being capable of being severed and removed without material injury to building, action for their wrongful conversion will lie against defendant, after demand upon him for permission to remove same, and refusal on his part, although still attached to building. *Stout* v. *Stoppel*, 536, *and note.*

12. Wooden platform was erected for trade purposes, in defendant's building, by tenant who assigned to plaintiff for benefit of creditors. Plaintiff, with defendant's consent, assigned term to third party, but reserved platform and right to enter and remove it. Upon entering for that purpose within reasonable time, defendant claimed to own platform, and threatened to have plaintiff arrested for stealing if he removed it. *Held*, That action lay against defendant for wrongful conversion of platform, notwithstanding it was still annexed to building. *Shaperia* v. *Barry*, 538, *and note.*

FORCIBLE ENTRY.
Where statute gives to person unlawfully in possession right of action for forcible entry by true owner, that remedy is exclusive, and trespass cannot be maintained. *Canavan* v. *Gray*, 718, *and note.*

FOREIGN CORPORATION. See CORPORATION, 18.

FORFEITURE. See INSURANCE, 3, 4. SALE, 4.

FORMER RECOVERY.
1. Judgment against surviving member of firm does not conclude representatives of deceased partner. *Buckingham* v. *Ludlow*, 753.

2. In action on bond conditioned for payment of sum in five annual instalments, confession of judgment for four is no bar to action for fifth subsequently falling due. *Ahl* v. *Ahl*, 812.

3. Where facts claimed to afford a *defence* are sufficient to constitute *counter claim*, defendant is not bound to set them up. *Witte* v. *Lockwood*, 482.

4. Defendant relying solely on legal title, in action to recover possession of real property, and failing, is not estopped to maintain action to correct mistakes in deeds under which parties to such action respectively claimed. He has his election to rely on such equitable title as defence or counter claim, or may maintain action thereon. *Id.*

5. Where party has choice between two actions on same demand, and selects one, which is decided by competent tribunal, either for or against him, as general rule he will not be permitted to resort to other. *Walsh* v. *Canal Co.*, 482.

FRAUD. See ACTION, 2. ASSIGNMENT, 2. CORPORATION, 13. DEBTOR AND CREDITOR, 5, 6. NATIONAL BANKS, 3. PARDON. VENDOR AND VENDEE, 4.

1. Party who can make out his case without introducing into it fraud in which his opponent and himself participated, will obtain relief in spite of effort on part of opponent by plea or offer of proof to set up such fraud. *Chaffee* v. *Sprague*, 687.

2. As between original parties, when one has been guilty of intentional and deliberate fraud, by which to his knowledge other has been misled, that fraud might have been discovered by reasonable care and diligence is no answer. *Livington* v. *Strong*, 812.

FRAUDS, STATUTE OF. See TRUST AND TRUSTEE, 1,
1. Written memorandum required by 17th section need not be *delivered.* *Drury* v. *Young*, 74.

2. Place of signature immaterial; name may be printed. *Id.*

3. Person rendering services under contract invalid by, may recover their value in action on *quantum meruit.* *Buckingham* v. *Ludlow*, 753.

4. Oral guaranty of payment of note of third person, given in payment of debt of guarantor, is within statute, even if principal object is payment of guarantor's own debt. *Dows* v. *Swett*, 687.

5. Contractors agreed with merchants to pay orders and time checks issued

FRAUDS, STATUTE OF.
by sub-contractor. The merchants gave credit exclusively to contractors. *Held*, That promise was not within statute. *Best* v. *O'Hara*, 146.
6. Defendant promised that if plaintiff would attend sale to be made under deed of trust given to secure note of third person held by plaintiff, and would buy in property for defendant, he would pay plaintiff the amount of note. *Held*, that promise was not within the statute. *Hale* v. *Stuart*, 346.
7. Where debtor, creditor and third person, who owed debtor, came together and agreed that third person should pay creditor, and debtor was released, contract was not within the statue. *Howell* v. *Field*, 346.

GARNISHMENT. See ATTACHMENT.

GIFT. See DEBTOR AND CREDITOR, 3. LEGACY, 3.
1. To support *donatio causa mortis* there must be delivery of subject by donor as a gift, such as, in case of gift *inter vivos*, would invest donee with title. *McCord* v. *McCord*, 687.
2. Where bonds are delivered under express promise in writing to return same "whenever called for," the terms and conditions of writing cannot be varied by parol, and such undertaking is entirely incompatible with absolute gift; but no duty to return will arise until demand, and statute of limitations does not begin to run until then. *Selleck* v. *Selleck*, 812.
3. Intestate, shortly before her death, gave promissory note to plaintiff, who was daughter of intestate's husband by former marriage. Daughter worked for father for some time after majority, but no contract for pay was proved. Father, by third person, conveyed homestead to intestate. Referee stated as fact that they designed and often talked between themselves that plaintiff should be paid; that father so expressed his wish when he conveyed homestead, and it was to carry out this purpose that note was given. *Held*, that there was no declaration of trust, no legal consideration for note, and as gift, it rested in promise, not executed. *Rogers* v. *Rogers*, 622.

GUARANTY.
Guaranty indorsed upon note is absolute contract for payment at maturity upon default of maker, and guarantor will be liable, although guarantee failed to enforce lien upon personal property by which note was secured, until security became lost and maker insolvent. *Adams, &c.*, v. *Tomlinson*, 146.

GUARDIAN AND WARD. See ASSIGNMENT, 7. TRUST AND TRUSTEE, 9.
Mere delay of ward on coming of age to compel guardian to settle accounts in probate court, does not discharge sureties, notwithstanding guardian may, in meantime, have become insolvent. *Newton* v. *Hammond*, 219.

HIGHWAY.
1. Abandonment of, by non-user does not work a forfeiture: a formal order of the proper authorities is necessary. *Jones* v. *Williams*, 346.
2. W., a butcher, bought an ox at S. market. While his drovers were driving the ox through streets of S., it became unmanageable, and, without negligence on part of drovers, rushed into T.'s shop and caused certain damage. *Held*, that W. was not liable. *Tillett* v. *Ward*, 245, *and note*.

HUSBAND AND WIFE. See CONFLICT OF LAWS, 1, 3. DEBTOR AND CREDITOR, 6. EXECUTION, 6. REPLEVIN, 5. TRUST AND TRUSTEE, 6.
I. *Divorce and Alimony.*
1. Where wife has sufficient separate property she is not entitled to temporary alimony or expenses in a divorce suit. *Westerfield* v. *Westerfield*, 283.
2. Divorce suit abates by death of either party before decree: and this effect extends to whatever is identified with the proceedings. *McCurley* v. *McCurley*, 812.
3. Wife has right, independently of merits of case, to require husband, when she is living apart from him, and without means of her own, to defray expenses of prosecuting her suit for divorce, court exercising discretion as to when and to what extent allowances shall be granted. *Id.*
4. Jurisdiction exercised in divorce suit with respect to custody of children is continuing, and order may be modified at any time during minority, without reservation of such power in original order. *Neil* v. *Neil*, 219.

HUSBAND AND WIFE.

5. Jurisdiction to award alimony in divorce proceedings is purely statutory. Hence judgment for alimony made without reserve, where time for new trial has elapsed and there is no statutory provision for modifying judgment, cannot be changed. *Sammis* v. *Medbury*, 687.

II. *Separate Estate.*

6. Conveyance to a married woman's separate use does not bar curtesy except where there is a clear intent: trustee's covenant to convey at her death to her appointees or heirs, *held*, not to indicate such an intention. *Tremmel* v. *Kleiboldt*, 75.

7. Husband can not pay debts with wife's separate money, and if creditor knowingly receives such, wife may recover. If invested by creditor in realty and husband insolvent, she may enforce a lien in equity. *Maddox* v. *Oxford*, 346.

8. In such a case it was a proper subject of equitable set-off that husband held bond for titles from creditor more than amount of wife's fund invested in the land, and that she subsisted on rents, &c., of the land. *Id.*

9. Some Points of Comparison between English and American Legislation, as to Married Women's Property, 761.

III. *Contracts, Conveyances, &c.*

10. Contracts of *feme covert* are, by common law, void. *Musick* v. *Dobson*, 52, *and note.*

11. Mere moral obligation is not sufficient consideration to support promise, unless there is some antecedent legal liability. Therefore moral obligation of married woman, created by her agreement while covert, will not support a new promise made after coverture is ended, or make subsequent husband liable for debt. *Id.*

12. Purchase of land in wife's name is presumptively for her benefit: but presumption may be rebutted. *Johnson* v. *Turner*, 220.

13. Husband may ratify contract for necessaries furnished to wife on his credit, by promise to pay. *Conrad* v. *Abbott*, 75.

14. Wife's earnings, unless in independent business, cannot be basis of claim against husband to prejudice of his creditors. *Triplet* v. *Graham*, 146.

15. "Irrevocable power of attorney" to collect rents, given as security for loan, is between parties an equitable mortgage of rents, and when executed by married woman and acknowledged in statutory form, is valid against her. *Joseph Smith Co.* v. *McGuinness*, 418.

16. Where lien for purchase-money is reserved in deed for land purchased by married woman with her husband's consent, it may be enforced, though notes given be void against woman personally. *Bedford* v. *Burton*, 75.

17. In such a case, woman can not rescind sale, nor will she or her husband be allowed for permanent improvements. *Id.*

18. In such a case where interest above ordinary legal rate may be, and has been stipulated for, it may be recovered. *Id.*

19. Married woman purchases land, pays part cash and in deed, "assumes * * * as part of the purchase-money" a mortgage debt. This was only separate property she possessed. She conveyed to F. and he to defendants by like deeds. Upon foreclosure, proceeds were insufficient to pay debt. *Held*, that aside from disability of coverture, acceptance by married woman of the deed was an agreement to pay mortgage debt as part of consideration. The transaction was not a purchase of equity of redemption. *State* v. *Casey*, 219.

20. Married woman may convey her separate property, her husband joining, and stipulate for such terms of payment as she may think best. *Id.*

21. Defendants as grantees of F., were liable to mortgagee for deficiency, but, in such action, it is a good defence to show, that before plaintiff has assented to, or acted on promise in his favor, the agreement has been rescinded. *Id.*

INCUMBRANCE. See Mortgage.

INFANT. See Intoxicating Liquors, 4, 5. Negligence, 9, 11. Replevin, 5. Trover, 1. Trust and Trustee, 4.

1. Plaintiff must show that goods purchased by, were necessaries, notwith-

INFANT.
standing defendant assumes burden of showing them not to be so. *Wood* v. *Losey*, 605, *and note.*

2. Infant sued for price of horse, showed that his sole business was to carry on mother-in-law's farm for share of produce, and that she was to furnish all teams, tools and implements. *Held*, that this showed horse not to be a "necessary," and that it was in error to give jury to understand that it was necessity of horse to the farming business, instead of to his part in it, that fixed liability. *Id.*

3. General principles applicable where question of necessaries is involved. *Id.*, *note.*

4. When court can pronounce contract of infant to be to his prejudice, it is void, when to his benefit, as for necessaries, it is good; and when contract is of uncertain nature, it is voidable only at election of infant. *Green* v. *Wilding*, 271, *and note.*

5. Conveyance of land by infant for money consideration, not shown to have been inadequate, is voidable at election of infant within reasonable time after attaining majority. *Id.*

6. Where infant is upon platform of railroad station, not as passenger or upon any business connected with railroad company, if injured by passing train he cannot recover on theory that company has failed to discharge toward him a legal duty. *Railroad Co.* v. *Schwindling*, 453, *and note.*

7. *Semble*, that in such case company would only be liable for wanton or intentional injury. *Id.*

INJUNCTION. See ASSIGNMENT, 11. CONSTITUTIONAL LAW, 35. EQUITY, 15. EXECUTION, 6. NUISANCE, 1. PARTNERSHIP, 18. RAILROADS, 3, 9, 10. TAXES, 6. TRADEMARK, 1. WATERS AND WATERCOURSES, 3.

1. Where injury is irreparable, equity will interfere by injunction; and, if necessary, after injury commenced, may compel, by mandatory injunction, restoration of property to original condition. *Henry* v. *Koch*, 394, *and note.*

2. Court may punish party for wilful violation of injunctional order, notwithstanding same ought not to have been granted; but it may not, in such case, order party disobeying to pay any sum as indemnity to opposite party. *Koehler* v. *Dobberpuhl*, 283.

3. One against whom injunction is issued upon an *ex parte* application, does not forfeit his legal right to a hearing by violating the injunction. *Id.*

4. To have nuisance abated by, party must show that injury complained of is such, in its nature and extent, as to call for interposition of court of equity, and that the right on which he grounds his title to relief is clear. *Stanford* v. *Lyon*, 753.

5. Mandatory injunction is awarded as of course, wherever it is necessary and appropriate process for carrying decree into effect. *Id.*

6. Will not lie to prevent simple trespass, consisting of single act, where person committing or threatening trespass is able to respond in damages; but if insolvent, and trespasses of grave character are threatened to be repeated, equity will interfere to prevent wrong by restraining threatened trespass. *Owens* v. *Crossett*, 419.

7. Trustees of Methodist Episcopal church can be compelled by mandatory injunction to open church building closed by them against the duly appointed preacher, on ground that it was not for interest of church that he be pastor, and that he was appointed against wish of majority of members. *Whitcar* v. *Michenor*, 753.

8. Representation of dramatic work which proprietor has never copyrighted or caused to be printed, if made without license, may be restrained by injunction, although such representation is from copy obtained by spectator attending public representation by proprietor for money, and afterwards writing it from memory. *Tompkins* v. *Halleck*, 220

INSANITY. See INSURANCE, 27, 28.

INSOLVENCY. See DEBTOR AND CREDITOR, 22–25.

1. Discharge no bar to action by creditor not a party to proceedings, who is citizen of another state. *Hill* v. *Carlton*, 146.

INSOLVENCY.

2. Discharge under insolvent law does not bar debt contracted before its passage, the creditor in no way becoming party to insolvency proceedings. *Conway* v. *Seamons*, 622.

3. Nor is such debt discharged though merged in judgment rendered after passage of act. *Id.*

4. Law discharging such debt is unconstitutional. *Id.*

5. Maine insolvent law of 1878 was valid when enacted, though operation was suspended by U. S. bankrupt law then existing. When repeal of bankrupt law took effect insolvent law went into operation, and took cognisance of all acts within its provisions done while it was so suspended, and applied to contracts made during that time. *Palmer* v. *Hixon*, 419.

INSPECTION. See CONSTITUTIONAL LAW, 22.

INSURANCE. See CONSTITUTIONAL LAW, 36. CORPORATION, 3. PARTNERSHIP, 12. PLEADING, 4.

I. *Generally.*

1. Law providing penalty against agent of foreign insurance company for acting without certificate of authority from auditor showing company's compliance with act, and declaring that any person aiding in transacting insurance business of such company shall be subject to such penalty is constitutional and valid. *Pierce* v. *People*, 622.

2. Defendant in this case regarded as agent of company, notwithstanding clause in policy providing that any person, other than the assured, who shall participate in any transaction concerning the insurance, will be deemed agent of assured. *Id.*

II. *Life.*

3. Where company refuses to receive premium on life policy, on ground of lapse of policy by reason of non-payment on day stipulated, and assured claims that company has waived right to assert forfeiture, equity has power to determine and enforce rights of parties. *Insurance Co.* v. *Tullidge*, 688.

4. Although policy and renewal receipts may contain stipulation that agents of company shall not have authority to waive forfeitures where premiums have not been paid on or before day designated, yet course of business between agent, assured and company in giving effect to payments made when overdue, may preclude company from objecting to payment tendered when overdue, where no notice has been given. *Id.*

5. Under accident policy, providing that no claim shall be made where death or injury may have happened in consequence of exposure to obvious or unnecessary danger, and containing condition that assured is required to use all due diligence for personal safety and protection, no recovery can be had for death of assured, caused by his being struck by railroad train, while running along tracks in front of it in night time, to get on train approaching in opposite direction on parallel track. *Tuttle* v. *Ins. Co.*, 688.

6. Person may insure his own life and make policy payable to person without interest therein. Hence, where policy was taken out on life of one and made payable to another (who had no legal interest in it) in case he survived the assured, and there was strong evidence to show that transaction was a wager, *Held*, that it was for jury to say whether policy was obtained in good faith. *Langdon* v. *Insurance Co.*, 385, *and note.*

7. Applicant was asked: "Has any application ever been made, either to this or any other company, upon which a policy was not issued?" *Held*, that negative answer was not improper, although application made to another company had not been finally passed on. *Id.*

8. Applicant made full statement regarding name of his usual medical attendant to sub-agent, who, putting his own construction on the facts, filled in the wrong name. *Held*, that company could not take advantage of the mistake. *Id.*

9. What is insurable interest. Assignment to person without. *Id.*, *note.*

10. If dealings of insurance company with insured and other policy holders are such as to induce belief that payment of premium within reasonable period

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after day fixed will save a forfeiture, company cannot forfeit policy of one who acted on that belief and subsequently made or tendered payment. *Insurance Co.* v. *Doster*, 60.

11. Clause declaring that agents cannot receive overdue premiums or waive forfeitures, cannot be set up where company habitually send renewal receipts to its agent, leaving their use to his judgment, and he, with knowledge of company, receives premiums several days after they are due, and insured, relying on such practice, tenders the premium within a reasonable time after it is due. *Id.*

12. Where it had been invariable custom of company to send insured statement of the premium due after deducting dividend, with notice when, where and to whom same could be paid, and on account of a failure to send such notice premium was not paid when due but was tendered within reasonable time afterward, policy does not lapse. *Id.*

13. *Semble*, Where premium is liable to be reduced by dividends, company should give insured reasonable notice of amount of dividends and thereby of cash to be paid to keep policy alive. *Id.*

14. When person not sole beneficial owner, pays premium to keep up policy of life insurance, he is entitled to lien in following cases only: 1. By contract with beneficial owner. 2. By reason of right of trustees to indemnity out of trust property for money expended in its preservation. 3. By subrogation to their right of some person who at request of trustees, has advanced money for that purpose. 4. By reason of right of mortgagee to add to his charge any money paid to preserve property. *In re Leslie*, 753.

15. If application for policy provides that representations and answers therein "shall form the basis and become part of the contract of insurance" and "that any untrue answers will render the policy null and void," and policy recites that it is issued "in consideration of the representations and agreements in the application for this policy, which application is referred to and made a part of this contract," in an action upon policy, application is to be considered part of contract, and if representations in it are in a material respect untrue, action cannot be maintained, though untrue representations were inserted by agent employed by defendant to solicit insurance, without knowledge of applicant, who orally stated truth to agent. *McCoy* v. *Insurance Co.*, 220.

III. *Fire.*

16. Consignee of goods damaged in transit, has no right to abandon them to insurance company and claim whole insurance, except in case of total loss, or of such damage as to render them unmarketable. *Hicks* v. *McGehee*, 419.

17. Where order confirming sale made under foreclosure to mortgagee who is a party, is at same term vacated and sale set aside for want of notice, insurable interest of mortgagor in possession is same as before sale. *Ins. Co.* v. *Sampson*, 220.

18. Where, in such case, loss occurs after confirmation, and before sale set aside, insurable interest of mortgagor not divested by such unauthorized sale and confirmation. *Id.*

19. A policy, providing that it shall be void in case insured shall make other insurance without consent, is avoided by such subsequent insurance, even though second policy is itself avoided by similar provision. *Turner* v. *Ins. Co.*, 275.

20. Policy on articles of furniture described them as "all contained in house No.— McMillen street, Providence, R. I." Insured, without knowledge of insurer, removed these articles to house in another street, where they were consumed. *Held*, that statement of locality was continuing warranty, and that insured could not recover. *Lyons* v. *Ins. Co.*, 419.

21. Contract for insurance with person who has no insurable interest in property, or who can not sustain any pecuniary loss by injury thereto, is a mere wager. *Spare* v. *Ins. Co.*, 409.

22. Judgment creditor has insurable interest in property of debtor; but to recover, must show that judgment debtor has not sufficient property left, out of which to satisfy judgment. *Id.*

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23. Insurer may be estopped to insist on conditions and restrictions contained in policy, issued with knowledge of facts inconsistent therewith, but neither party to contract of insurance void as against public policy is estopped to deny its legality. *Spare* v. *Ins. Co.*, 409.

24. After date of contract for sale of house insured against fire, and before completion of purchase, house was damaged by fire and loss paid by company in ignorance of contract. The purchase being subsequently completed, and the purchase-money received by defendants having the effect of extinguishing the loss, *Held*, that insurance company could recover amount paid by them. *Castellain* v. *Preston*, 769, *and note:* reversing same case, 168, and note.

25. If insured calls upon insurer to pay loss, and latter makes no specific objection to form or sufficiency of proofs of loss, or to entire neglect to furnish same in season for claimant to repair error, but declines payment on other grounds, he cannot set up defects in proof as defence, or most that he can claim is that question of waiver may go to jury. *Mosely* v. *Ins. Co.*, 688.

26. Where subject of insurance was only "goods and groceries," and there was clause in policy forbidding the keeping of gunpowder for sale or on storage, "upon or in the premises insured," *Held*, that meaning of "premises" here was "lands and tenements," that it did not include "goods and groceries," and therefore, if gunpowder had been kept on "premises" not insured, it would not vitiate policy. *Id.*

27. A presumption of a man's insanity is not raised by his suicide; but that fact, in connection with other evidence, is pertinent to issue of insanity, especially where suicide is immediately preceded by murder or attempted murder of members of family, and the destruction of his property without any apparent motive or provocation. *Karow* v. *Ins. Co.*, 283.

28. Where there is nothing in policy to contrary, insurer is not released from liability because property was burned by assured while insane, nor unless burning was caused by voluntary act, assent, procurement, or design of assured. *Id.*

29. Collision of steamboats caused fire, and one of them with goods insured "against immediate loss by fire," sank before goods were burned. *Held*, that if damage could have been avoided except for fire, loss was within policy. *Exp. Co.* v. *Ins. Co.*, 75.

30. Person taking out policy in mutual company is at once bound by charter and by-laws. *Ins. Co.* v. *Miller Lodge*, 76.

31. Usage of such company to notify members of annual interest on deposit notes, and time of payment, does not impose duty so to do. *Id.*

32. Company cannot, without assent or request of insured, apply to such annual interest a dividend of profits not expressly made applicable thereto. *Id.*

INTEREST. See ACCORD, 3. DAMAGES, 4, 5. EQUITY, 17. HUSBAND AND WIFE, 18. LEGACY, 4, 5. NATIONAL BANK, 2.

1. Maker of note being sued, agreed by separate instrument, in consideration of dismissal of suit, that interest to accrue upon the note should bear interest. *Held*, valid. *Jasper Co.* v. *Tavis*, 347.

2. Open account bears interest only after demand. *Richardson* v. *Laclede Co.*, 347.

3. Where plaintiff seeks to recover interest on interest, burden of proof is on him to prove promise to pay same for valuable consideration, and an acceptance, actual or constructive, of such promise; where forbearance is relied on as such consideration, it must appear that time was actually given in pursuance of the request implied by the promise. *Edgerton* v. *Weaver*, 284.

4. Note was given for debt, with interest added at twenty per cent.; Texas statute provides, that "all judgments * * * shall bear interest at rate of eight per cent. per annum, * * * except when the contract upon which the judgment is founded bears a specified interest greater than eight per cent. per annum, and not exceeding the highest rate of conventional interest permitted by law (twelve per cent.), in which case the judgment shall bear the same rate of interest specified in such contract." *Held*, That judgment on above note only bore interest at eight per cent. *Ewell* v. *Daggs*, 689.

INTOXICATING LIQUORS. See CRIMINAL LAW, 29. STATUTE, 6.

1. License to sell, from United States, does not dispense with necessity for license under state law. *Pierson* v. *The State*, 419.

2. Sale of liquor by club to members not within statute prohibiting sales without license. *Graff* v. *Evans*, 99, *and note.*

3. Two persons, unconnected in business, selling liquor to husband habitually intoxicated, are jointly liable to wife. *Rantz* v. *Barnes*, 483.

4. Barkeeper selling liquor to adult and seeing minor present, and understanding he is to participate in drinking same, is not guilty of selling or giving liquor to minor. *Siegel* v. *The People*, 623.

5. If jury should find that barkeeper knew that adult was being used by minor as a screen, they might find him guilty. *Id.*

6. Indictment following words of statute, charged defendant with keeping or maintaining house "used for illegal sale or keeping of intoxicating liquor." *Held*, That charge must be construed to mean keeping for such illegal use or with knowledge that house was so used. *State* v. *McGough*, 546.

7. At trial upon this indictment, justice allowed defendant's witness to be asked, in cross-examination, if witness did not tell A., witness for state, that if A. would mix up testimony in F.'s case, F. would give A. $20. *Held*, error, inquiry being irrelevant, as no connection appeared between F.'s case and case on trial. *Id.*

8. Justice instructed jury, "He, the defendant, is presumed to know the kind of business which was openly being carried on in his establishment by his servants and agents. The defendant admitted that he was the keeper of the place, and that he was there personally in charge of it during the time covered by the indictment. He is not only presumed to know but he is responsible." *Held*, error, knowledge and responsibility of defendant being for jury. *Id.*

JOINT STOCK COMPANY. See CORPORATION, 14, 15.

JUDGMENT. See ACCORD, 2. CORPORATION, 11. FORMER RECOVERY, 1. INSOLVENCY, 3. INTEREST, 4. MUNICIPAL CORPORATION, 2. UNITED STATES COURTS, 5.

1. Court cannot, at subsequent term, correct judgment in respect to costs, where that subject was considered and judgment entered by clerk as directed by court, unless such power was carried forward by motion made during term at which judgment was rendered. *Williams* v. *Williams*, 146.

2. Defendant served with process issuing from court of competent jurisdiction is concluded by judgment. *Harbig* v. *Freund*, 146.

3. THE REMEDIES FOR THE COLLECTION OF JUDGMENTS AGAINST DEBTORS WHO ARE RESIDENTS OR PROPERTY HOLDERS IN ANOTHER STATE, OR WITHIN THE BRITISH DOMINIONS, 697.

JUDICIAL SALE.

1. *Caveat emptor* applies to administrator's sale of lands for payment of debts. *Tilley* v. *Bridges*, 419.

2. Administrator or executor selling lands under decree of court, has no authority to warrant title. If purchaser obtains no title, he must, as general rule, suffer the loss, unless fraud or mistake has entered into transaction. *Id.*

JURISDICTION. See REMOVAL OF CAUSES, 4.

JUROR AND JURY. See CRIMINAL LAW, 13.

1. In the selection of grand and petit jury for Baltimore county, under provisions of Act of 1870, ch. 220, one of forty-eight names drawn for general panel was non-resident. This name was not among grand jurors. *Held*, 1. That this did not affect the grand jury. 2. That statute was to be regarded mainly as directory, and irregularities not materially violating it or prejudicing rights of the citizen were not fatal. *State* v. *Glasgow*, 347.

2. The Maryland law which *exempts* persons over seventy from jury service does not *disable* them. *Green* v. *State*, 347.

3 IS THE JURY SYSTEM A FAILURE? 81.

LANDLORD AND TENANT. See ACTION, 1. AGENT, 1. FIXTURE, 6, 8, 12. NEGLIGENCE, 6. WASTE.

LANDLORD AND TENANT.

1. If lessor deprives lessee of beneficial enjoyment and lessee therefore abandons premises, it is an eviction. *Skalir* v. *Shurte*, 76.

2. Assignee for creditors, who, in conduct of his trust, continues in possession of premises let to his assignor, does not become personally liable for rent unless there be special agreement. *White* v. *Thomas*, 76.

3. Demise of factory with fixtures and machinery, implies no warranty that machinery is in good repair or of sufficient capacity to do work for which premises were let. *Naumberg* v. *Young*, 146.

4. Owner leased to tenant rooms in upper story approached by stairway common to all the tenants, the railing of which was out of repair. The stairway became dangerous from ice and snow and tenant slipped and caught rail, which gave way. *Held*, that landlord, who had made no covenant to repair, was not liable. *Percell* v. *English*, 312, *and note*.

5. A promise to repair made after the lease, is *nudum pactum*. *Id.*

6. Landlord who lets tenements in building to different tenants, with right of way in common over flight of stone steps, without railing, leading from street to yard, is not liable to tenant injured by falling upon ice accumulated upon steps, if it is not landlord's duty to keep them clear of ice, although so constructed and of such material as to occasion accumulation of ice, there being no change in construction since tenancy began. *Wood* v. *Cotton Co.*, 813.

LEGACY.

1. To make legacy specific, it must clearly appear that testator intended legatee to take particular thing and nothing else. *Wyckoff* v. *Executors of Perrine*, 754.

2. If debt is subject of specific legacy, payment of debt, whether voluntary or compulsory, will destroy legacy. *Id.*

3. Gift of personal property for life, with power to legatee to use it as she may deem proper, or to sell it, or any part of it, for her benefit, as she may deem needful or best, *Held*, absolute. *Kendall* v. *Kendall*, 284.

4. Will, executed in 1848, contained clause: "I give and bequeath to my daughter, ——, $1000, to be paid on her marriage or when she arrives at age, with interest after, at her option." Legatee attained majority in 1849, and was married in 1853; testatator died in 1854. *Held*, that legacy drew interest as soon as daughter arrived at age. *Trustees* v. *Grover*, 813.

5. Legacy bears simple interest, and payments should be applied first to extinguish interest and then principal. *Id.*

LIBEL.

1. Action for can be maintained against corporation. *Evening Journal* v. *McDermott*, 147.

2. Previous or subsequent publications admissible to show temper of defendant's mind in publication complained of, even though barred by Statute of Limitations. *Id.*

3. Publication in newspaper of false statement that person was convicted and sentenced to prison for libel, is actionable, without proof of special damage. *Boogher* v. *Knapp*, 483.

4. In action for, where language is ambiguous or ironical, plaintiff's acquaintances may state their understanding as to whom charge refers, and what it imputes, *Knapp* v. *Fuller*, 689.

5. Defendant, after suit brought, published another article referring to plaintiff by name: admissible to show animus. *Id.*

6. What one of defendants said, few days after first publication, manifesting hostile feeling toward plaintiff, also admissible. *Id.*

7. Defendant wrote defamatory statements of plaintiff in letter to W., under circumstances making it privileged, but by mistake placed it in envelope directed to another person, who received and read letter. *Held*, that publication was privileged in absence of malice in fact. *Tompson* v. *Dashwood*, 754.

8. If any one, including proprietor of newspaper, goes out of his way to asperse personal character of public man, and to ascribe to him base and corrupt motives, he does so at his peril, and must either prove truth of what he says or answer in damages. *Negley* v. *Farrow*, 813.

LIBEL.

9. Malice, but not in ordinary sense of hatred or ill will, is essential element in action for libel; but if publication be in itself libellous, law in such case implies malice, and only question before jury on plea of not guilty, publication being established, is the amount of damage; in estimating which, jury are to consider whether article was published wantonly, or as editors of newspaper honestly commenting upon official conduct of plaintiff. *Negley* v. *Farrow*, 813.

10. Statute 32, Geo. III, ch. 60, not in force in Maryland, where court always decides whether publication is in law a libel. *Id.*

LICENSE. See CONSTITUTIONAL LAW, 5, 16. INTOXICATING LIQUOR, 1.

LIEN. See ADMIRALTY, 3. ATTACHMENT, 4. CORPORATION, 9. HUSBAND AND WIFE, 7. 16. INSURANCE, 14.

LIMITATIONS, STATUTE OF. See BILL OF REVIEW. GIFT, 2. TRUST AND TRUSTEE, 9.

1. May be pleaded by a county. *Gains* v. *Hot Springs County*, 419.

2. In action for damage against railroad company for unreasonable delay in transportation of merchandise, where portion of delay occurred more than six years prior to date of writ, the damage for that portion of delay was barred. *Jones* v. *Railway Co.*, 420.

3. Action entirely arising out of a statute not within. *Cowenhoven* v. *Freeholders*, 147.

4. Is not suspended or waived by representation made by administrator to Orphans' Court to procure order to sell lands for payment of debts, nor is order of sale such an adjudication as prevents administrator setting it up at law. *Everett* v. *Williams*, 548.

5. New cause of action, cannot escape statute, by being introduced by way of amendment into declaration in action for different cause, brought before lapse of statutory time. *North Chicago Co.* v. *Monka*, 814.

6. But where new count is added merely to restate same cause of action, plea of statute thereto is improper. *Id.*

7. Upon a plea of, the only evidence given of possession during first year was that defendant's grantor went once upon the land, set up two stakes at what he was told were corners, tried to ascertain the boundaries and afterwards paid the taxes for the year. *Held*, insufficient. *Bradstreet* v. *Kinsella*, 348.

8. Instrument signed by maker and witnessed, stating that maker had received of S. a horse, for which he promised to pay S., or order, a sum named in one month from date, "said horse to be and remain the entire and absolute property of the said S. until paid for in full by me," is not a promissory note, and an action brought thereon, more than six years after its date, cannot be maintained. *Sloan* v. *McCarty*, 689.

9. Action to foreclose mortgage, given to secure note, may be commenced at any time within twenty-one years after execution, notwithstanding note is barred by statute. *Riddle* v. *Howenstein*, 689.

10. Award under seal is specialty within meaning of statute, though submission was by parol. *Halnon* v. *Halnon*, 689.

11. "I thank you for your very kind intentions to give up the rent of *Tyny-bwrwydd* next Christmas, but I am happy to say at that time both principal and interest will have been paid in full." *Held*, sufficient acknowledgment to bar statute. *Green* v. *Humphreys*, 754.

12. Trusts which fall within exclusive jurisdiction of courts of equity are not subject to statute. *Buckingham* v. *Ludlum*, 754.

13. Courts of equity only follow statute by analogy, and when it is not against conscience to do so. *Id.*

14. Creditor of firm may have relief in equity for payment of his debt, against separate assets left by deceased partner, if surviving partner be insolvent and firm assets exhausted. *Id.*

15. Representatives of deceased partner cannot set up statute against firm creditor, so long as surviving partner continues liable for debt and has right to seek contribution from deceased partner's estate, for payment of debts of firm. *Id.*

16. One partner cannot set up statute against other, where there have been dealings in respect to partnership affairs, within six years. *Id.*

LUNATIC. See INSANITY.

1. Incapable of acquiring pauper settlement in his own right. *Inhabitants, &c.*, v. *Inhabitants, &c.*, 147.

2. Such a person, until forty-eight years of age, lived in his father's family and was then sent to insane hospital. *Held*, That he followed father's residence acquired while pauper was in hospital. *Id.*

MALICIOUS PROSECUTION. See ABATEMENT. CORPORATION, 1.

1. Voluntary dismissal of civil action is *prima facie* evidence of want of probable cause. *Wetmore* v. *Mellinger*, 711.

2. Although action is commenced with probable cause, yet if plaintiff continues to prosecute it when there is no probable cause, he is liable for malicious prosecution. That probable cause had ceased to exist, must, however, appear otherwise than from evidence introduced on trial. *Id., and note.*

3. Advice of counsel, on full and fair statement of facts and information, will not protect, unless acted on in good faith. *Id.*

4. On issue of probable cause, certain depositions in former suit, tending to show that defendant could have ascertained facts which would have had important bearing on such issue, adversely to his right to maintain prior action, were admissible. *Id.*

5. N. C. Co., a corporation, with malice and without probable cause, sued M. and others, in civil action, and by order of injunction made on its *ex parte* application, prevented M., and others from entering upon their property, and also from prosecuting profitable business. After year had passed, N. C. Co. dismissed its action. *Held*, that company was liable in action of malicious prosecution, and that measure of damages was value of use of property, in business, during period of ouster. *Coal Co.* v. *Upson*, 483.

MANDAMUS.

Will not lie upon relation of citizen and owner of land abutting upon street through which line of railroad authorized by ordinance would pass, to compel city clerk to make advertisement required by ordinance. *State* v. *Henderson*, 221.

MARRIAGE. See CONTRACT, 6. HUSBAND AND WIFE.

MASTER AND SERVANT. See AGENT, 8, 9. NEGLIGENCE, 5.

1. Railroad company and its train hands must guard the trackmen from danger as far as practicable. *Dick* v. *Railroad*, 76.

2. Agreement between connecting lines of railroad does not affect third parties, nor make employees of one line co-employees of others. *Railroad Co.* v. *State*, 77.

3. Contract to work for period of seven months for $14 per month is entire, and full performance, or valid excuse for non-performance, must be shown to recover thereon. *Koplitz* v. *Powell*, 284.

4. Servant not ordinarily required to work during unseasonable hours; but if he voluntarily does so, it is no ground for claiming extra compensation or that there is breach of contract by employer. *Id.*

5. Mere request to perform unseasonable service does not justify servant in quitting; nor does refusal to perform same justify discharge. *Id.*

6. Person employed by city to superintend digging of trench, and one employed as laborer to dig trench, by same master, are *prima facie* fellow servants. *Flynn* v. *City*, 814.

7. Master not liable for injury occurring from negligence of fellow-workman, unless latter was known to be careless or incompetent. *Fones* v. *Phillips*, 420.

8. Where performance of duties peculiar to master is intrusted to mere workman, such workman, *quoad hoc*, and to extent of master's duty intrusted to him, stands in master's place, and his negligence binds master. *Id.*

9. It is duty of master, in assigning servant to duty at or about dangerous machinery, to give detailed and special warning as to all *latent* dangers, not discoverable by reasonable and ordinary exercise of diligence. *Id.*

10. Corporation is negligent if it employs an imprudent or incompetent person as master over other employees, and responsible for injury to another

MASTER AND SERVANT.

servant, without fault, from negligence of such master; especially where injured employee was child receiving orders solely from said master and without access to president or general superintendent: and it makes no difference that master violated orders. *Atlanta Cotton Factory* v. *Speer*, 147.

11. Railroad company is liable in action on behalf of fireman killed by washing out of culvert, which was in improper condition, resulting from negligence and carelessness of its bridge-builder and road-master: his negligence was negligence of defendant, and notice to him of defective construction was notice to latter. *Davis* v. *Railroad Co.*, 623.

12. Workman was injured by break of elevator chain and fall of elevator. His business was to load elevator on lower floor and unload it on upper. Staircase near elevator connected the floors, and workman was injured while riding with his load on elevator. It appearing that chain had broken some six weeks before and had been repaired, and evidence being conflicting whether employer's superintendent had been notified of break, and it also appearing that ratchets to arrest fall of elevator were not in working order: *Held*, that employer's negligence was for the jury, and that he was not relieved from liability if defective condition of chain and ratchets arose from negligence of fellow-workmen of plaintiff, whose duty it was to take care of them. *Mulvey* v. *Locomotive Works*, 623.

13. M., while using machine in his capacity of workman for manufacturing company discovered its defects and unsafe condition and complained to foreman, under whose orders he worked and whose duty it was to see that machinery was in order. Foreman promised to remedy defects and directed him to work on machine. M. thereupon continued to use machine, and, in so doing, was injured through said defects before any steps were taken to remedy same. *Held*, that his knowledge was not conclusive of contributory negligence, but was a fact to be considered by jury in determining that question. *Manufacturing Co.* v. *Morrissey*, 574, *and note.*

MECHANICS' LIEN.

Where promissory note is given and received in payment for materials and work the lien is waived. *Crooks* v. *Door, Sash and Lumber Co.*, 348.

MINOR. See INFANT. GUARDIAN AND WARD. PARENT AND CHILD.

MORTGAGE. See ATTACHMENT, 2. COVENANT, 2. DEED, 4. DURESS, 3. FIXTURE, 4, 5, 7. HUSBAND AND WIFE, 15, 19. INSURANCE, 17, 18. LIMITATIONS, STATUTE OF, 9. TRUST AND TRUSTEE, 3, 4. UNITED STATES COURTS, 4. VENDOR AND VENDEE, 2, 3.

I. *Of chattels.*

1. Owner of land, or mortgagor in possession after condition broken, may make valid chattel mortgage of growing crop superior to lien of subsequent attachment. *Kimball* v. *Sattley*, 689.

2. Mortgage of chattels belonging to another with oral consent or ratification of owner, cannot affect subsequent mortgage of same chattels by owner to one without notice of ratification. *Maier* v. *Davis*, 549.

II. *Of realty.*

3. Right of mortgagee to recover on insurance policy or mortgage where debt has been paid on the other. *Castellain* v. *Preston*, 168, *note.*

4. Trustee in deed of trust is trustee for both debtor and creditor, and he must use efforts of prudent man to protect all interests in property. *Ventres* v. *Cobb*, 284.

5. All persons must take notice of boundaries of counties and legislative changes thereof. *Welch* v. *Stearns*, 147.

6. Where mortgage has been recorded in one county and mortgaged premises become by legislative enactment part of another county, notice of foreclosure should be published in county in which the land is when notice is given. *Id.*

7. Generally, one purchasing land subject to mortgage, by express agreement assumes the mortgage. In such case, as between parties, purchaser becomes

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primarily liable and mortgaged property the primary fund for payment of debt. *George* v. *Andrews*, 755.
8. Mortgagee may, by his dealings with purchaser and mortgagor, recognise purchaser as principal and mortgagor as only security. *Id.*
9. Extension of time of payment of mortgage by agreement between holder and purchaser, without concurrence of mortgagor, discharges him from liability. *Id.*

MUNICIPAL CORPORATION. See CONSTITUTIONAL LAW, 5, 20. CONTRACT, 2. LIMITATIONS, STATUTE OF, 1. NEGOTIABLE INSTRUMENT, 1. ORDINANCE. SURETY, 4. TAXATION, 1. WHARF, 2.
1. City not liable formegligent acts of officers or men employed in fire department. *Wilcox* v. *City*, 814.
2. Board of supervisors can, in good faith, compromise judgment in favor of county. *Collins* v. *Welch*, 148.
3. When tax collector arrests tax-payer for non-payment of tax already paid and which is thereupon paid a second time, the town is not liable for arrest, nor for money while in hands of collector. *Inhabitants, &c.*, v. *Hurd*, 148.
4. Power of to pass ordinance interfering with rights of individuals or public must clearly appear in its charter; authority to pass ordinances to suppress gambling, and such others for peace and good of town, as may be deemed expedient, not repugnant to constitution, &c., does not warrant passage of ordinance forbidding keeping of billiard table for hire. *State* v. *Belvidere*, 148.
5. Bound by unauthorized acts of officers of that branch which is invested with jurisdiction to act for corporation upon subject to which particular act relates. *City* v. *Railroad Co.*, 284.
6. Property of county being held for public, is under uncontrolled power of General Assembly. *Harris* v. *Board of Supervisors*, 483.
7. Where bonds donated by municipal corporation to railroad company recited, on their face, that an election had been held in accordance with authorizing statutes, *Held*, 1. That defect in method of election in no way impairs validity of bonds in hands of *bona fide* holder. 2. That decision of state Supreme Court to contrary, is not binding on United States Supreme Court. *Town of Pana* v. *Bowler*, 484.
8. In the absence of *express* power city cannot subscribe or donate to manufacturing company, and bonds so given are not valid in hands of purchaser for value but with knowledge. *Ottawa* v. *Carey*, 549.
9. In Illinois, under coustitution of state, corporate authorities of cities cannot be invested with power to levy and collect taxes except for corporate purposes; hence city could not borrow money nor issue bonds unless it had power to pay same by taxation. *Id.*
10. City has power to establish such reasonable appliances in public thoroughfares where railroads pass, as will by temporary arrest of travel, protect public from danger. *Textor* v. *Railroad Co.*, 348.
11. In action against, for damages resulting from breaking of plank in bridge, the ground is positive misfeasance, or else neglect; in latter case notice of condition of street is necessary, in the former not. *Mayor, &c., of Brunswick* v. *Braxton*, 348.
12. Legislature having provided for assessment of tax on railroad companies, and its payment and collection by comptroller-general, if power to assess and levy tax on railroads had been conferred on municipal corporation by previous act, it must yield to last act on subject. *City* v. *Savannah Railway Co.*, 755.
13. City had notice of hole in sidewalk near railroad crossing and neglected to repair same within reasonable time. Person in passing over such walk, exercising due care, stepped into hole, whereby he was unavoidably thrown upon railway track before approaching train, and in attempting to get up his clothes caught upon rail or spike in sidewalk, and he was killed by train. *Held*, that city was liable. *City* v. *Schmidt*, 815.
14. Under Illinois constitution corporate authorities of cities cannot be invested with power to levy and collect taxes except for corporate purposes. *Held*, that unless city had been invested with power to raise money by public taxation to be devoted to private parties for developing water-power in city or vicinity

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for manufacturing purposes, bonds so given were void in hands of purchaser with notice. *City* v. *Carey*, 755.
15. *Semble*, that power to subscribe to company's stock would not, of itself, authorize donation to it. *Id.*
16. Under general grant of power to declare what shall be a nuisance town authorities will have no right to pass ordinance declaring thing a nuisance which is clearly not such; in doubtful cases the action of the authorities will bind the court. *Railway Co.* v. *Town of Lake View*, 420.
17. On the other hand there are many things which courts, without proof, will declare nuisances, and ordinance declaring them such will be valid on its face; of this character is use of steam for propelling street cars along thickly populated public street. *Id.*
18. Where city is, by its charter, limited to levy of one per cent. of taxes for all purposes whatever, three-tenths of which shall be for payment of its bonded indebtedness, and city does levy one per cent. tax, court, on application of creditor who has recovered judgment on bonds of city, will compel application of three-tenths of such taxes to payment of such judgment, if that much is necessary. *City* v. *Underwood*, 421.
19. Where county courts were authorized to subscribe in behalf of township to stock of railroad company "building or proposing to build a railroad into, through or near such township," and to issue county bonds in payment, and there was a vote of township in favor of issuing certain bonds and subscription was made and bonds issued, reciting that they were authorized by vote of people and issued under order of court; it appearing that, at time vote was taken and bonds issued, company only proposed to build road from point nine miles distant from township to further distance, and interest on the bonds having been paid for three years, *Held*, that courts should acquiesce in determination by qualified voters and local authorities that proposed road was "near" township. *Kirkbride* v. *Lafayette County*, 690.
20. Under constitution of Missouri, city ordinance is void which undertakes to confer upon one person right to remove and convert to his own use carcases of all dead animals, not slain for food, found within limits of city, to exclusion of right of owners to remove and use them before they become a nuisance. *River Rendering Co.* v. *Behr*, 690.

MURDER. See CRIMINAL LAW, V.

NATIONAL BANKS. See BANK, 4, 5. CRIMINAL LAW, 20, 27. ERRORS AND APPEALS, 11.
1. Have power to lend money upon personal obligation secured by pledge of warehouse receipt. *Cleveland* v. *Bank*, 690.
2. Interest received by, greater than lawful rate can not be set off in action on note; but bank can only recover face of note without interest. *Bank* v. *Childs*, 348.
3. Where stockholder, with good ground to apprehend failure of bank, collusively transfers his shares to irresponsible person, transaction will be deemed a fraud on creditors and transferror will be held to liability imposed by § 12 of act of June 3d 1864. *Bowden* v. *Johnson*, 285.
4. Bill in equity in such a case, praying for discovery as well as relief, sustained. *Id.*
5. National banking act confers power to receive special deposits, and where national bank has been accustomed to receive United States bonds as such, gratuitously, it is liable for loss occurring through want of that degree of care which good business man would exercise in keeping property of such value. *Bank* v. *Zent*, 484.
6. Demand, and refusal by bank to deliver, with no other explanation than statement that it has no such bonds in its possession, furnish sufficient proof of loss by negligence. *Id.*
7. Sect. 3466 Rev. Stat. U. S., giving priority to demands of United States against insolvents cannot be applied to demands against national banks which have failed, because inconsistent with national banking act. *Bank* v. *United States*, 484.

NEGLIGENCE. See BAILMENT. COMMON CARRIER, 10, 11. MASTER AND SERVANT, 11, 13. MUNICIPAL CORPORATION, 1, 11, 13. NATIONAL BANKS, 5, 6. RAILROAD, 4, 6, 8. SHIPPING, 2.

1. Is the omission to use the means reasonably necessary to avoid injury to others. *Railroad Co.* v. *Johnson*, 117, *and note.*

2. To maintain action for, there must be fault on part of defendant and no want of ordinary care on part of plaintiff. Difference between ordinary and slight negligence. Comparative negligence. *Id.*

3. Aside from statutory or municipal regulation, no rate of speed at which railroad train may be run is negligence *per se*. *Powell* v. *Railway*, 485.

4. In clear case of contributory negligence the court should direct jury to find for defendant. *Id.*

5. If negligence of railroad company contributes to injury, company is liable, even though negligence of fellow-servant also contributes. *Railway Co.* v. *Cummings*, 285.

6. When bowl is set by landlord in tenant's room for his exclusive use, with apertures insufficient to carry off all water delivered by faucet if left open, and this defect and tenant's negligence in using bowl are together the cause of damage, liability of landlord is that of owner as distinguished from that of occupant. *McCarthy* v. *Savings Bank*, 285.

7. Landlord does not insure against tenant's negligence, nor does his liability follow from fact that building does not contain most improved system of water pipes. *Id.*

8. That boy between six and seven was upon railroad track at or near street crossing, though his father had shortly before seen him going toward track, not enough to establish contributory negligence as matter of law. *Johnson* v. *Railroad*, 148.

9. One who places in hands of child article known to be dangerous, is liable for natural and probable result of his act, although there be an intervening agency. *Binford* v. *Johnson*, 50, *and note.*

10. Act in direct violation of criminal statute negligence *per se*. *Id.*

11. Liability for injury received by child while trespassing. *Id, note.*

12. Railroad company liable, notwithstanding negligence of intestate, if ordinary care was not exercised by its employees after they knew of intestate's negligence. *Beems* v. *Railroad Co.*, 148.

13. Natural effects of tort are those which might reasonably be foreseen; proximate effects those between which and the tort there intervenes no culpable and efficient agency. Mere failure by third parties to extinguish fire started through negligence of defendant, not such agency. *Wiley* v. *Railroad Co.*, 148.

14. Where passenger is injured by mutual negligence of servants of company on whose train he is rightfully travelling, and of servants of another company with whom he has no contract, action may be maintained against either company. *Railway Co.* v. *Shacklet*, 421.

15. No legal presumption that railroad company, while in exercise of lawful right to run its locomotives and trains over its road and to use fire in so doing, will not permit fire to escape. *Palmer* v. *Railway*, 485.

16. That railroad company uses good machinery and most approved appliances to prevent escape of fire, and has careful and competent men in charge, will not, in case fire does escape of itself, rebut *prima facie* inference of negligence. *Id.*

17. Railroad companies must use reasonable precautions to prevent fire being carried against all except extraordinary and unusual winds. *Id.*

18. Where obstruction in street is in plain view of driver of vehicle, and he drives against it, he is guilty of contributory negligence, and it is no answer to say that his attention was taken up with looking above ground to direct team. *Yahn* v. *City*, 644.

19. That woman sixty-seven years old, injured by being knocked down by horse and wagon, while crossing street on some flagstones at junction with two other streets, all much travelled, in compact part of city, did not, before and while crossing, look up or down the street but straight ahead, is not conclusive evidence of want of due care; question is for jury. *Shapleigh* v. *Wyman*, 690.

NEGLIGENCE.

20. Person sailing in his yacht on Lord's day in violation of statute, if run into by steamboat, can only maintain action if act of those in charge of steamboat was wanton and malicious. *Wallace* v. *River Nav. and Ex. Co.*, 691.

21. Freight car was left standing on side track so near main track as to make collision inevitable. Passenger was sitting with elbow on sill of open window resting his head on his hand. Corner of coach struck freight car so that it jarred the passenger's elbow outside window and his arm was crushed between the two cars. *Held*, that he was not guilty of contributory negligence. *Farlow* v. *Kelly*, 421.

NEGOTIABLE INSTRUMENT.

1. Overdue coupon of municipal bond which has not matured, is. *Town of Thompson* v. *Perrine*, 221.

2. Transfer after maturity, of interest coupons payable to bearer on day named, only passes title of transferror. *McKim* v. *King*, 77.

NOTARY PUBLIC. See BILLS AND NOTES, 27. CRIMINAL LAW, 27.

NOTICE. See ATTACHMENT, 8. BANK, 2. MORTGAGE, 5. MUNICIPAL CORPORATION, 11. RAILROAD, 12. SURETY, 1.

Purchaser is not chargeable with constructive notice of all instruments and incumbrances of record, but only of such as lie in apparent chain of title. *Grundies* v. *Reid*, 815.

NOVATION. See DEBTOR AND CREDITOR, 7

NUISANCE. See EQUITY, 15. INJUNCTION, 4. MUNICIPAL CORPORATION, 16, 17.

1. Ringing at early hour (to arouse boarding-house keepers or operatives living with them) of bell weighing 2000 pounds and set in open tower 40 feet from ground, and so situated as to residences owned and occupied before erection of bell, that they receive full force of sound, the inmates being deprived of sleep and their comfort impaired, is a private nuisance; and mill owner may be restrained by injunction, the ringing not being shown to be necessary or reasonable; and evidence of custom to so ring bells in other places is inadmissible. *Davis* v. *Sawyer*, 349.

2. NOISE AND VIBRATION AS ELEMENTS OF NUISANCE, 625.

OFFICER. See ATTACHMENT, 2, 3, 6, 7. ATTORNEY, 1. PROHIBITION, 2. SHERIFF, 2.

1. Town marshal may be bailiff. Constable cannot be sheriff, deputy sheriff or clerk of superior court, but may be marshal. *Lewis* v. *Wall*, 549.

2. Where officer is called upon by nature of service, to make an inquiry and investigation after process comes into his hands, he is only required to exercise reasonable care, skill and diligence in so doing. *Street* v. *Pennell*, 285.

3. A sheriff who erroneously certifies in levy on land that appraisers were disinterested, is not liable in absence of negligence. *Id.*

4. Remedy for such error is in motion for leave to amend return, and in power of court under such motion, to extend necessary relief. *Id.*

5. In absence of constitutional or legislative restriction, where no definite term of office is prescribed by law, power of removal is incident to power of appointment, and that power is sole judge of existence of cause. *Patton* v. *Vaughan*, 422.

6. In action on treasurer's official bond, his settlement with county court is conclusive. *Hunnicutt* v. *Kirkpatrick*, 422.

ORDINANCE.

1. Charter and ordinances of city stand in same relation as constitution and statutes of state. *Quinette* v. *City*, 485.

2. Where city charter provided that judges of election should receive no pay, and repealed all inconsistent ordinances, *Held*, that ordinance providing for pay of judges and clerks was repealed only as to judges. *Id.*

PARENT AND CHILD.

1. Father of infant child is entitled to its custody rather than mother; and

PARENT AND CHILD.

when father has entrusted child to grandmother, her custody is in legal intendment his. *State* v. *Barney*, 422.

2. Hence, when mother, assisted by her brother, forcibly took the child so entrusted from its grandmother, the force being exerted by the brother at mother's request, *Held*, that brother was criminally liable for assault and battery. *Id.*

PARDON.

Unconditional pardon cannot be treated as nullity on *habeas corpus* proceeding, after re-arrest on ground that pardon was fraudently obtained by acts done to affect prisoner's health and representations concerning it. *Knapp* v. *Thomas*, 485.

PARTITION.

1. At common law, partition operates by way of delivery of possession and estoppel; in equity, unless otherwise provided by statute, the transfer of title in partition can only be effected by execution of conveyance, which may be decreed, and compelled by attachment. *Gay* v. *Parpart*, 221.

2. Where decree for partition erroneously declared nature of estate of each co-tenant and deeds were made three days after which did not follow decree, bill being brought twelve years afterwards to perfect partition by compelling conveyances in accordance with original decree, *Held*, that court could inquire into equities of parties arising out of surrounding circumstances and refuse to decree conveyance when inequitable to do so. *Id.*

3. If original decree was made by consent of party against whom error was committed, without valuable consideration, and no one is interested but volunteers or purchasers with full notice, no such decree will be made. *Id.*

PARTNERSHIP. See CORPORATION, 10. EXECUTORS AND ADMINISTRATORS, 3, 5. FORMER RECOVERY, 1. LIMITATIONS, STATUTE OF, 13–16.

1. Action at law lies for breach of contract to form copartnership. *Hill* v. *Palmer*, 149.

2. If damages from breach of partnership agreement belong exclusively to one partner, and can be assessed without taking an account of partnership business, he may maintain an action at law. *Id.*

3. One partner can not assign firm property for benefit of creditors, unless his copartner can not be consulted. *Lieb* v. *Pierpont*, 34, *and note.*

4. Partner purchasing in good faith interest of copartner, though firm be known to be insolvent, can claim exemption out of what was partnership property as against partnership creditors. *Mortley* v. *Flanagen*, 77.

5. Executor or administrator of surviving partner dying while settling business, is entitled to assets, and must complete settlement, unless relieved by contract or order of court; and he may be compensated for so doing. *Dayton* v. *Bartlett*, 77.

6. Where parties agree to share in profits, law will infer partnership; but presumption may be rebutted. *Lockwood* v. *Doane*, 815.

7. Rule *omnia præsumuntur contra spoliatorem* is for wrongdoers, and should not be applied to case where failure to perform duty (as to keep accounts) is due solely to incapacity. *Diamond* v. *Henderson*, 550.

8. In action by one partner against another for accounting, though it appears on trial that nothing is due plaintiff, yet, if defendant unreasonably neglected to render account, there should be judgment adjusting rights of parties, and court may impose costs on defendant. *Id.*

9. Where one member of firm goes out and new partner takes his place, and business is conducted under same style, customer of old firm selling and delivering goods to new firm after change, but without notice of it, can hold either firm liable, but not both. *Scarf* v. *Jardine*, 364, *and note.*

10. Where partners sought and obtained aid of accountant in adjusting accounts, for purpose of settlement, and he prepared paper showing what he considered a fair settlement, which they adopted, *Held*, no arbitration or award, but that paper merely constituted settlement, liable to be opened for mistake. *Stage* v. *Gorich*, 807.

11. Where it is clearly shown that one partner has made advances for use of

PARTNERSHIP.
firm of considerable sums, which were not taken into consideration at settlement, on bill filed by one of partners for account, *Held*, that case should have been referred to master to state accounts anew, so far as concerned omitted items. *Stage* v. *Gorich*, 407.

12. Where fire insurance is effected by member of firm in firm's name, upon property of firm, and premium is paid from funds of firm, though charged by such member to himself, insurance will be for benefit of firm, notwithstanding member thus effecting it intends it for his own private benefit. *Tebbetts* v. *Dearborn*, 422.

13. If one partner on dissolution of firm, sells his interest in partnership stock to copartner, relying alone upon agreement of latter to pay firm indebtedness, retiring partner will have no lien on goods for payment of partnership liabilities, that can be enforced in equity. *Parker* v. *Merritt*, 422.

14. But where on dissolution, goods equal in amount to firm's indebtedness are left with continuing partner, to be converted into money with which to pay partnership indebtedness, he is trustee of such goods for that purpose, and the trust may be enforced in equity by retiring partner for benefit of partnership creditors, as against subsequent purchasers or execution creditors, with notice of equities of retiring partner. *Id.*

15. Where surviving partner, with acquiescence of personal representatives of deceased partner, and in good faith, carries on the business and pays debts incurred in so doing, with partnership assets, such disposition thereof will be valid, and cannot be treated as a fraud in law upon partnership creditors; but upon bill filed by personal representatives of deceased partner, or partnership creditor, he can be compelled to wind up firm business and apply its assets to payment of its debts. *Fitzpatrick* v. *Flanagan*, 221.

16. If partner, bound to give his time to business of firm, and not to engage in any other speculation or business in his own name and on his own account to detriment of firm, uses his time, and labor and materials of firm, in making improvements in machines manufactured and sold by firm, with knowledge and without objection of other partners, they can claim no interest in letters patent procured by him, at his expense and in his name, for such improvements. *Belcher* v. *Whittemore*, 815.

17. Agreement provided that superintendent should receive for his services one-sixth of net profits on city contract; he should have privilege of drawing fixed sum per month, and of inspecting the books of account; but it was expressly agreed that he was not a partner with contractor, and was not to be in any manner liable for damages growing out of prosecution of contract, other than as such superintendent. *Held*, on bill filed by superintendent against contractor and city, that he was not a partner. *Reddington* v. *Lanahan*, 486.

18. Three railroads operated under partnership arrangement, three lines of road. B. obtained judgment against one of the railroads for injuries, not knowing of partnership. He levied on engine, &c., owned by the three companies, and same were sold to his agent L. He had levied upon another such engine and advertised it for sale, when he was enjoined. Bill having been brought setting up superior rights of partnership creditors, *Held*, that court will not enjoin where equities are equal, or where, as here, it does not clearly appear that partnership indebtedness existed at time of seizure, or especially under statute, whereby passenger, injured through negligence, has right in attaching engine, &c., superior to general equity of partners. *Railroad Co.* v. *Bixby*, 691.

PARTY WALL. See COVENANT, 5.

PATENT. See CONSTITUTIONAL LAW, 3. CONTRACT, 4. PARTNERSHIP, 16.

1. For mechanism cannot be re-issued so as to cover process. *Wing* v. *Anthony*, 149.

2. Design of patent laws is to reward a *substantial* discovery or invention. *Atlantic Works* v. *Brady*, 286.

3. Patent not set up by way of defence, where there is no dispute as to time it was issued, may be referred to, in connection with other testimony as to invention, to fix date thereof. *Id.*

PATENT.

4. Bill may be dismissed because inventions described in patent are not patentable, even when no such defence is set up in answer. *Slawson* v. *Railway Co.*, 423.

5. Where patentee is not pioneer in field, but has merely devised new form to accomplish results known in that field, his patent cannot be extended to embrace substantially different form. *Duff* v. *Pump Co.*, 756.

6. Device capable of doing work of patented invention but not designed or used for that purpose, and which would not be taken to be intended to be used in that way, not a "prior invention." *Clough* v. *Manfg. Co.*, 77.

PAYMENT. See BILLS AND NOTES, 19. DEBTOR AND CREDITOR, 8, 9

1. To recover back money paid to prevent illegal distress for taxes it is sufficient to show that such distress was impending and would certainly have been made. *Howard* v. *City*, 149.

2. Simple acceptance by suit or otherwise, by third person, of promise made to pay debt due him from another, will not release such other person; it must appear that subsequent obligation was accepted in lieu of original debtor's. *Briscoe* v. *Callahan*, 691.

PENSION.

1. Money due for, not liable to seizure by creditors, until it has come to pensioner's hands. *State* v. *Assoc.*, 149.

2. Exemption under § 4747 Rev. Stat., applies only while money is in course of transmission. *Triplett* v. *Graham*, 149.

PILOTAGE.

1. State law of Georgia compelling masters of vessels bearing towards any port of that state (except coasters plying between ports thereof and of South Carolina and Florida) to receive first pilot offering outside of bar, under penalty of payment of full pilotage in case of refusal, does not violate art. 4, sec. 2 of Constitution U. S. *Thompson* v. *Sprague*, 222.

2. But the *exception* in said law is contrary to section 4237 U. S. Rev. Stat., and annulled by it, except as to ports situated on waters which are the boundary between Georgia and those states. As to these, master may employ any pilot licensed or authorized by laws of either state. *Id.*

3. Prior contract between master and another pilot will not give right to reject pilot first offering. *Id.*

4. Contract between commissioners of pilotage and licensed pilots to limit the number of pilots for three years to ten, was void. It is the duty of commissioners to supply the port with sufficient number of pilots, and those licensed have no right to prevent the issuing of a license to others in discretion of commissioners. *Wright* v. *Commissioners*, 149.

PLEADING. See DAMAGES, 7. EQUITY, 8, 12. FIXTURE, 2, 3. LIMITATIONS, STATUTE OF, 5, 6. PATENT, 4.

1. Count in tort for deceit in sale of stock may be joined with count in contract to recover back price paid. *Teague* v. *Irwin*, 815.

2. General rule in torts and parol contracts is that day when tort was committed or contract made, is not material. When made material by defendant's plea, plaintiff may reply by another day. *Duffy* v. *Patten*, 423.

3. Trover and case may be joined. *McConnell* v. *Leighton*, 423.

4. In action on insurance policy it is not necessary to set out in *hæc verba* the several conditions therein, and then allege performance; or to prove that insured did not die in duel, or while employed on railroad, &c. *Tripp* v. *Ins. Co.*, 191.

PLEDGE. See CORPORATION, 21, 25.

POLITICAL ASSESSMENTS. See CRIMINAL LAW, 28.

POSSESSION. See LIMITATIONS, STATUTE OF, 7. TRESPASS, 2.

POUND. See REPLEVIN, 6, 7.

POWER OF ATTORNEY. See HUSBAND AND WIFE, 15.

PRACTICE.

1. On judgment for plaintiff on demurrer, defendant has no right to have damages assessed by jury. *Hanley* v. *Sutherland*, 286.

2. Rule of court provided that execution of writing, the foundation of claim of set off, need not be proved, unless affidavit is filed denying the same. *Held*, that want of such affidavit does not prevent plaintiff from showing that instrument, dated January 2d, was executed January 1st, and that his duplicate differed from defendant's. *Ames* v. *Quimby*, 150.

3. Charge that plaintiff was not bound by mistake in carrying out price in bill of particulars, it not appearing by record what were contents of the bill, *held*, not erroneous. *Id.*

4. Supreme Court of United States cannot review, on second writ of error, its own judgment on first. *Id.*

PRESUMPTION. See BILLS AND NOTES, 4. DOMICILE, 3. HUSBAND AND WIFE, 12. INSURANCE, 27. PARTNERSHIP, 7.

None in law that man who disappeared at unknown date in 1809, was dead on 29th of April 1816. *Dean* v. *Bittner*, 691.

PROCESS. See CORPORATION, 18.

1. Service of summons on non-resident while going to, attending or returning from trial, as witness or party, is not a nullity, but court will set it aside or change venue, or otherwise remedy any special disadvantage such service entails upon defendant. *Massey* v. *Colville*, 550.

2. Citizen of Pennsylvania was extradited to Ohio, upon application of C. A. & Co., in criminal prosecution. *Held*, that service of summons and order of arrest in civil action by said C. A. & Co., directly after he had entered into recognisance to appear at next term and before conviction, and before opportunity to return home, was rightfully set aside. *Compton* v. *Wilder*, 692.

PROHIBITION.

1. Writ of prohibition lies only to inferior judicial tribunal, and not to bodies exercising ministerial and administrative powers only. *Dougan* v. *District Court*, 528, *and note*.

2. Where statute authorizes administrative or ministerial body (as council of city), to appoint an officer to hold during its pleasure, such body can remove in its discretion, and exercise of such discretion cannot be controlled or restrained by the courts. *Id.*

3. To justify disregard of order of court it should appear upon face of pleading that court had no jurisdiction. *Id.*

4. Where court is proceeding to punish disregard of illegal order, as for contempt, it is proper case for preventive relief by prohibition. *Id.*

PUBLIC POLICY. See CONTRACT, 5, 6, 10. CORPORATION, 23. PILOTAGE, 4.

RAILROAD. See CORPORATION, 17. EVIDENCE, 1. INFANT, 6, 7. MASTER AND SERVANT, 1, 2. MUNICIPAL CORPORATION, 12. NEGLIGENCE, 3, 12, 15, 17.

1. When company has right of constructing particular line, with general power to purchase property, it may purchase road constructed on that line. *Branch* v. *Jesup*, 222.

2. Are *quasi* public corporations, and can be controlled by courts to extent of interest of public therein. *McCoy* v. *Railroad Co.*, 725, *and note*.

3. Railroad company cannot bind itself to deliver to particular stock-yard all live stock coming over its line to certain point, and may be compelled to treat all equally by injunction at suit of proprietor of stock-yards discriminated against. *Id.*

4. A passenger injured in a sleeping-car may, in absence of notice, assume the whole train to be under one management, and sue the railroad company. *Railroad* v. *Wolrath*, 78.

5. Is liable for proper transportation of passenger to point of destination on through ticket, as for baggage on through check; and this, notwithstanding notice on ticket that company shall not be liable except as to its own line. *Railroad Co.* v. *Coombs*, 756.

RAILROAD.

6. Owner of ox which was upon railroad track through his negligence, and by collision with which cars and engine are thrown off track and damaged, is liable therefor. *Railroad Co.* v. *Baldwin*, 756.

7. If animal escaped from enclosure without owner's knowledge or fault, he would not be liable for consequential damages in action on the case by railroad company. *Id.*

8. If railroad constructing its road under grant of right of way, fails to build necessary culverts, by reason whereof surface water is turned upon lands of grantor, it will be liable for damages, and cannot set off incidental benefits to grantor from construction of road. *Gilbert* v. *Railroad*, 150.

9. Contract between two connecting roads for division of earnings according to respective distances of carriage, is within discretionary powers of directors, and its execution cannot be enjoined at instance of stockholder, who does not show dishonest or fraudulent purpose in making contract, and that he will be injured thereby. *Elkins* v. *Railroad Co.*, 286.

10. In application for such an injunction by stockholder of one road, the other is necessary party. *Id.*

11. Directors, without authority by statute or charter, passed resolution (subject to approval of stockholders at special meeting provided for therein), to assume certain debts and buy majority of stock and bonds and the equipment of rival road. *Held*, that proposed purchase was *ultra vires* and against public policy. *Id.* 287.

12. Clerk in railroad was entrusted with refunding certificates in blank to be filled up and delivered to holders of coupons. He fraudulently filled up some of certificates and disposed of them. *Held*, that company was responsible to innocent purchaser, and that facts that certificates happened to be in hands of party who was an agent of company, or that they happened to represent on their face that coupons had been deposited by such person, were insufficient to discredit certificates. *Railroad Co.* v. *Bank*, 816.

13. Before entering train, plaintiff asked engineer if it would stop at Tilton, who replied that he did not know, but that they would stop at Beardsley's. Thereupon plaintiff entered car orderly and decently, with money to pay his passage, and thereby became passenger. Afterwards, on asking conductor same question, conductor without provocation cursed, abused and ill-treated plaintiff, striking him with lantern and finally knocking him out of car door. *Held*, that declaration setting out these facts was not for breach of contract, but in trespass on the case. *Turner* v. *Railroad*, 551.

14. Evidence of above facts sufficient to carry case to jury. *Id.*

RATIFICATION. See MORTGAGE, 2.

RECEIVER. See ASSIGNMENT, 11.

1. Creditors without judgment or lien, title or interest attaching to debtor's property, have no right, as a general rule, to injunction and receiver, and even after judgment there must be some special circumstances to authorize equitable interference. *Dodge* v. *Man. Co.*, 151.

2. Receiver of railroad was appointed at instance of bondholders, under order of court "to pay running expenses and expenses of receivership, and to pay debts due by said company for labor and supplies that may have accrued in maintenance of such property within six months preceding the rendition of this decree." Road was sold under decree of foreclosure and did not realize enough to pay bonds. While in receiver's hands, excess above running expenses was devoted to improvement of property. *Held*, that income of receivership having been so applied with consent of bondholders, fund in court could be appropriated as far as necessary to supply claims especially provided for when receiver was appointed. *Union Trust* v. *Souther*, 551.

3. EXTRA-TERRITORIAL JURISDICTION OF RECEIVERS, 289.

RELEASE. See ACCORD, 2. CONTRACT, 1. PAYMENT, 2.

RELIGIOUS SOCIETY. See INJUNCTION, 7.

REMOVAL OF CAUSES. See UNITED STATES, 5. UNITED STATES COURTS, 5.

REMOVAL OF CAUSES.

1. Appeal lies from order of Superior Court, granting petition for removal to U. S. Circuit Court. *Ellis* v. *Railroad Co.*, 816.

2. Bond filed with petition for removal contained condition that petitioner "shall enter in such Circuit Court, on the first day of its session next after the granting of said petition, a copy of the record." That next session was the next after the *filing* of the petition. *Held*, that the variation in form of bond from words of sect. 689, Rev. Stat., was immaterial. *Id.*

3. Company incorporated by two states cannot remove into United States Court suits brought against it in either by citizen thereof. *Railroad Co.* v. *Alabama*, 624.

4. Individual members of corporation created by a foreign state are conclusively presumed to be citizens of that state. *Steamship Co.* v. *Tugman*, 78.

5. Sufficient if citizenship appear affirmatively, by record. *Id.*

6. Upon filing petition and bond, jurisdiction of state court absolutely ceases, and it is not restored by failure to file the transcript within the time prescribed. *Id.*

7. Petition and bond were duly filed, and state court ruled suit not removable; party seeking to remove consented to reference, and contested suit to final judgment in state courts; *held*, that jurisdiction of state court was not thereby restored. *Id.*

8. Person acting as guard in aid of U. S. marshal officially engaged in enforcing revenue law, is acting under authority of that law, and entitled to have prosecution against him for act done in performance of his duty, removed into United States Circuit Court under sect. 643 of Rev. Stat. *Davis* v. *South Carolina*, 624.

9. To secure the benefit of separable controversy provision in Act of 1875, where suit was begun before act was passed, required an application to remove at or before the term at which case could first be tried after act went into operation. *Myers* v. *Swan*, 487.

10. Where legal title is in certain defendants whose presence is necessary to get equitable owner out of possession, they are not nominal but necessary parties, and being of same citizenship with plaintiffs, suit cannot be removed under local prejudice act. *Id.*

11. In will case two contestants were citizens of other states, and remaining contestants and executors citizens of Michigan: each set of contestants took an appeal. *Held*, that there was but one contest, and that the appeal by citizens of other states was not removable. *Fraser* v. *Jennison*, 151.

12. Where upon removal of cause from state court, copy of record is not filed within time fixed by statute, it is within legal discretion of federal court to remand the cause, and order remanding it for that reason should not be disturbed unless it clearly appears that discretion has been improperly exercised. *Railway Co.* v. *McLean*, 423.

13. If upon first removal, federal court remands cause because of failure to file copy in time, party is not entitled to file second petition for removal on same ground. *Id.*

REPLEVIN. See ATTACHMENT, 2. SHERIFF, 3

1. Does not lie at common law by one out of possession of realty against one in adverse possession to recover chattels severed from the realty. *Renick* v. *Boyd*, 307, *and note.*

2. Where statute authorizes a recovery for timber, lumber, coal "or other property" severed from the realty, those words only include property *ejusdem generis* and not growing crops. *Id.*

3. Tannery owner, when removing hides omitted some. Tannery was sold, and many years after, plaintiff while laboring for defendant, in erecting factory on premises, discovered these hides. *Held*, that owner had not lost title, and that finder acquired none. *Livermore* v. *White*, 423.

4. A. exchanged horses with B., then B. exchanged with C., without notice to C. of any infirmity of title. B. did not own horse he let A. have, and A. had to give him up to true owner. Then A. sought to reclaim from C. his original horse. *Held*, that C.'s title was good. *Tourtellott* v. *Pollard*, 423.

5. One of principals to replevin bond was a married woman and a minor.

REPLEVIN.
Held, that only she and defendant in replevin could take advantage of her disability, not her co-obligors. *Goodell* v. *Bates*, 423.
6. Where ordinance of municipal corporation provides that owners of horses or mules should not permit same to run at large within city limits, and subjects one violating its terms to fine therefor, if city marshal impound mischievous horse running at large in streets, owner cannot proceed against him by possessory warrant. *King* v. *Ford*, 551.
7. By common law cattle wandering about, damage feasant, might be taken up and impounded. *Id.*

RES ADJUDICATA. See EXECUTORS AND ADMINISTRATORS, 2. FORMER RECOVERY.
Doctrine of, applies to judgments of courts of last resort. *Choteau* v. *Gibson*, 349.

RESCISSION. See CORPORATION, 13. VENDOR AND VENDEE, 4.
Must be *in toto*. *Harzfeld* v. *Converse*, 487.

RESIDENCE. See DOMICILE.

REVOCATION. See DEED, 1.

REWARD. See CONTRACT, 2, 3.

SALE. See DAMAGES, 6. EVIDENCE, 19. TENDER. VENDOR AND VENDEE.
1. A merchant warrants what he sells to be reasonably suited to the use for which it is bought. This applies to fertilizers. *Barry* v. *Usry*, 349.
2. Upon delivery of goods on executory contract, purchaser, with full opportunity for examination, waives defects unless he refuses to accept under contract, or accepts only on condition; mere objection that goods are defective, insufficient. *Olson* v. *Mayer*, 287.
3. Delivery of bill of parcels to purchaser, who thereupon gives to seller lease of same chattel, without other delivery or change of possession, is not sufficient to pass title against subsequent purchaser in good faith from original seller. *Harlow* v. *Hall*, 78.
4. By conditional sale of wagon if vendee failed to pay note, he forfeited what he had paid, and vendor could take wagon. There was failure to fully pay; but vendor allowed wagon to remain with vendee, and accepted payments after last instalment was due. Without making demand he brought suit to recover balance of note, attaching wagon and holding it by virtue of attachment until trial commenced, when he entered nonsuit and claimed to hold it under contract. *Held*, if demand were necessary, bringing of suit was sufficient; that by making attachment, defendant did not waive his right under conditional sale, nor was he estopped from asserting it; and that he did not waive forfeiture by accepting payments after note was due. *Matthews* v. *Lucia*, 692.

SEAL. See BILLS AND NOTES, 5.

SET OFF. See HUSBAND AND WIFE, 8. RAILROAD, 8.

SHERIFF. See EQUITY, 10. OFFICER, 3, 4.
1. Sheriff who suffers arrested debtor to escape is liable in his official character and not as bail; and has no remedy over against debtor. *Carpenter* v. *Fifield*, 552.
2. Officer who allows one lawfully arrested to go at large without taking bail, suffers escape of such person. *Id.*
3. Where property levied on has been replevied, replevin bond is substituted for levy; and if the officer deprives plaintiff of advantages to be derived from bond, action will lie against him for breach of duty in not making money under his process; and in such cases a liberal protection will be extended over the rights of parties equitably interested against acts of mere nominal parties. *Harrison* v. *Maxwell*, 151.

SHERIFF'S SALE
1. Plaintiff purchasing at execution sale is presumed to have notice of all

SHERIFF'S SALE.

defects in record and proceedings, and will not be protected as *bona fide* purchaser if notice was insufficient. *Collins* v. *Smith*, 552.

2. Title of party in possession, to standing crops, is not divested until execution of sheriff's deed; and if fully matured at that time they will not pass by conveyance. *Everingham* v. *Braden*, 151.

SHIPPING.

1. Collision between vessels through negligence of either, without waves or wind or difficulty of navigation contributing to accident, is not "a peril of the sea" within that exception in a bill of lading. *Woodley* v. *Michell*, 757.

2. Where under charter-party or contract of affreightment, duty of discharging vessel rests upon affreighters and they neglect to perform same seasonably they will not be relieved from payment of damages by omission of express provision for payment of demurrage, or express agreement as to number of lay days. *Hayden* v. *Whitmore*, 287.

3. Where through negligence of those managing steam tug in towing schooner in navigable waters of Chicago river, schooner is run into elevator on land, breaking same and causing loss of quantity of grain, tort is not within exclusive jurisdiction of court of admiralty; state courts may afford remedy *Johnson* v. *Elevator Co.*, 487.

SLANDER.

No defence that words are spoken, when no one else is present, to person who knows them to be false and does not repeat them until after action brought. *Marble* v. *Chapin*, 78.

SPECIFIC PERFORMANCE.

1. Purchaser of land has right to good and marketable title; one about which there is no doubt that would produce a *bona fide* hesitation in the mind of the judge passing upon it. *Gill* v. *Wells*, 487.

2. Specific Enforcement of Contracts to Transfer Stock, 489.

STATUTE. See Jury, 1. Limitations, Statute of, 3. Municipal Corporation, 12. Ordinance. Replevin, 2.

1. Statute of one state or country re-enacted in another, will there be given same construction. *Skrainka* v. *Allen*, 487.

2. Statute revising whole subject-matter of former statute and evidently intended as substitute for it, repeals it without express words. *State* v. *Roller*, 692.

3. An affirmative statute to repeal a prior law must express such purpose, or be in irreconcilable conflict with it, or cover the whole ground occupied by it. *Red Rock* v. *Henry*, 349.

4. Where act is made punishable by fine and imprisonment, words in which offence is defined and punishment prescribed must be strictly construed. *Shultz* v. *Cambridge*, 222.

5. General words following particular and specific words, must generally be confined to things of same kind. *Id.*

6. In ordinance prohibiting saloon-keepers from permitting at, in or about doors, windows, openings, or in interior of saloons, "any blind, screen, painted or frosted glass, shade, curtain or other device," words "other device" do not embrace board partition between different rooms, extending from floor to ceiling, fastened in usual manner, and intended, when made, as permanent accession to realty. *Id.*

STOCK. See Estoppel, 3. Specific Performance, 2.

STOPPAGE IN TRANSITU. See Common Carrier, 5.

SUBROGATION. See Insurance, 24.

SUNDAY. See Criminal Law, 29. Negligence, 20.

SURETY. See Admiralty, 2. Bail. Bills and Notes, 24, 25. Guardian and Ward. Mortgage, 7–9.

1. *Verbal* notice to creditor to proceed against debtor insufficient to release surety. *Petty* v. *Douglass*, 488.

SURETY.

2. If surety in replevin bond given by administrator pay judgment, he can recover amount from sureties in probate bond. *State* v. *Farrar*, 692.

3. Sureties on executor's general bond not liable for failure to pay over balance of proceeds of sale of real estate, for which special bond has been given. *Robinson* v. *Millard*, 350.

4. Sureties upon official bond of city treasurer are not liable where municipality induced and was privy to misconduct of treasurer, alleged as breach of bond. *Newark* v. *Dickerson*, 552.

5. That book-keeper is also teller will not relieve his sureties as book-keeper, unless errors were connected with some improper act as teller or superinduced by his employment as such. *Bank* v. *Traube*, 79.

6. Such interchange of assistance between bank officers, as temporary need may require, is fairly within contemplation of appointment of such officer, and his sureties are liable for default made while temporarily filling place of another officer. *Bank* v. *Zeigler*, 249, *and note*.

7. Liability of sureties on official bonds of public officers. *Id.*, *note*.

TAX AND TAXATION. See CONSTITUTIONAL LAW, 36. EQUITY, 7. MUNICIPAL CORPORATION, 3, 12, 14. PAYMENT, 1.

1. Municipal corporations can not exempt from or commute taxes. *State* v. *Railroad Co.*, 79.

2. United States commissioners established rule that they would receive taxes on property advertised for sale only from the owner in person. *Held*, that the rule avoided the sale. *Kaufman and Strong* v. *Lee*, 151.

3. Mortgagor bound to pay taxes, or his tenant, cannot permit estate to be sold for them, and by purchase acquire title against mortgagee; nor can tenant for life or years against reversioner. *Dunn* v. *Snell*, 152.

4. If owner of credits reside in state, there is jurisdiction over his person and credits, which in law, in absence of anything showing a *situs* elsewhere, accompany him: if absent, but credits are in fact here, in hands of agent, for renewal or collection, with view of re-loaning money by agent as permanent business, they have a *situs* here for purpose of taxation. *Goldgart* v. *People*, 624.

5. Non-resident creditor, having debts due him from residents of state not put into hands of agent here, is not liable to taxation in this state. *Id.*

6. Court will not enjoin collection of taxes, due and unpaid, if same are legally imposed. That assessment is not strictly according to letter of law is insufficient. And when there is no ground for enjoining collection of tax, collector cannot be enjoined from making tax deed to holder of certificate of purchase, unless for matters transpiring since sale. *Moore* v. *Wayman*, 816.

TELEGRAPH.

1. Condition on printed blank "that no claim for damages shall be valid unless presented in writing within twenty days from sending the message," is valid. Delay in receiving message, occasioned by mistake of company, would not modify condition, if reasonable time was left, after knowledge of mistake, to present claim. *Herman* v. *Tel. Co.*, 624.

2. Reasonableness of time fixed to be determined by court. *Id.*

TENDER.

Not necessary, though required by contract, where other party declares that, if tendered, property will not be accepted by reason of alleged defect therein. *Tullos* v. *Rogers*, 692.

TITLE. See SPECIFIC PERFORMANCE,

TORT.

Joint defendants in action of tort are liable *in solido*, and verdict can not be apportioned. *Keegar* v. *Hayden*, 693.

TRADEMARK,

1. Use of trademark which misrepresents person by whom, and place where, article was manufactured, not enjoined. *Medicine Co.* v. *Wood*, 488.

2. When right to use trademark is transferred to others, *semble*, that fact of transfer should be stated in connection with its use. *Id.*

TRADEMARK.

3. Trader has right to make and sell machines similar in form and construction to those of rival trader, and in describing and advertising his own machines, to refer to rival's machines and rival's name, provided he does this in such a way as to obviate reasonable possibility of misunderstanding or deception. *Singer Manuf. Co.* v. *Loog*, 509, *and note.*

TRESPASS. See FORCIBLE ENTRY. INJUNCTION, 6. NEGLIGENCE, 11.

1. Does not lie for waste committed upon land by permission of person in possession, though unlawfully so. Remedy is an action of unlawful detainer, in which waste and injury committed may be recovered as well as possession. *Hawkins* v. *Roby*, 693.

2. Where person holds under paper title apparently good and is in actual possession of part of land, possession of part is possession of whole, and he can maintain trespass *quare clausum fregit*. *Parker* v. *Wallis*, 757.

3. Where defendant, not being owner, dug sand on land from time to time and sold same, his entries for that purpose were successive acts of trespass. *Id.*

4. Owner of land may enter and expel with reasonable necessary force wrongful occupant without being liable in trespass *quare clausum*, or for assault and battery; or for injury to occupant's goods, even if force used would subject owner to indictment at common law for breach of peace, or under statute for forcible entry. *Souter* v. *Codman*, 424.

TRIAL.

1. Request for charge on weight of testimony, improper. *Langdon* v. *Ins. Co.*, 388.

2. Where instructions of court give party benefit of all the law asked by his own prayers, he cannot object because they do not give more. *Repp* v. *Berger*, 757.

3. Case not to be withdrawn from jury unless testimony so conclusive as to compel court to set aside verdict in opposition to it. *Ins. Co.* v. *Doster*, 60.

4. Jury reported they were unable to agree, whereupon, defendant being present but his counsel not, justice gave additional instructions to jury and caused phonographic clerk to read his report of defendant's evidence. After verdict for plaintiff: *Held*, that defendant had no ground for exception. *Brothers* v. *Gardiner*, 552.

5. Where failure to offer material evidence in proper time is result of inadvertence, and it is not kept back by trick or for any unfair purpose, and the other party will not be deceived or injuriously affected by it, it should be let in, even after demurrer to evidence has been sustained: refusal so to do will be ground of reversal. *Tierney* v. *Spiva*, 488.

6. Court propounded to jury certain questions, covering only part of material issues of fact. These and answers were returned as special verdict. There was no general verdict or bill of exceptions showing evidence adduced. Judgment recited that it was rendered "upon the special verdict of the jury, and facts credited or not disputed upon the trial." *Held*, as facts set out in special verdict were insufficient to sustain judgment, and as without waiver (against which was every reasonable presumption), it was constitutional right of defendants to have jury pass on all material facts in issue; judgment must be reversed and new trial had. *Hodges* v. *Easton*, 223.

TROVER. See COMMON CARRIER, 4. FIXTURES, 9, 11, 12. PLEADING, 3.

1. Minor who hires vehicle to drive to certain place, and then drives elsewhere, is liable in trover for conversion. *Freeman* v. *Boland*, 424.

2. One who innocently obtains another's property from third person may, when informed of true ownership, lawfully return it to person from whom he obtained it, provided he does this before demand or suit; but asserting title in himself or returning it after demand, is a conversion. *Rembaugh* v. *Phipps*, 79.

3. Plaintiff sold herd of cattle conditionally, taking note and lien by which they were to remain his until note was "fully paid." Vendee, without knowledge of plaintiff, sold part of cattle to defendants, who paid him, and he paid plaintiff, who endorsed it on note. In action of trover, note remaining unpaid, *held*, that defendants were liable; and that money paid by them could not be

TROVER.
allowed in mitigation of damages, even though identical bank bills were sent to plaintiff. *Morgan* v. *Kidder*, 693.

TRUST AND TRUSTEE. See ASSIGNMENT, 10. EQUITY, 2. GIFT, 3. LIMITATIONS, STATUTE OF, 12. MORTGAGE, 4. PARTNERSHIP, 14. WILL, 1, 5, 6, 12, 15.

1. If one person purchases land with money of another, and takes deed in his own name, though done by verbal agreement, a resulting trust arises, enforceable in court of equity. *McNamara* v. *Garrity*, 624.

2. If legatee and *cestui que trust* fraudulently receives from executor and trustee part of principal, and converts it to his own use, subsequent trustee may retain, out of income afterwards coming to *cestui que trust*, the amount so converted. *Crocker* v. *Dillon*, 218.

3. Where power of *sale* is given to raise particular charge only, and purpose can be answered better by mortgage than by sale, and that method is not violative of intention of grantor, the former mode of raising the money should be preferred. *Lobenthal* v. *Raleigh*, 282.

4. Will creating trust contained following clause: "My said trustee shall have power to invest, and change the investment of said moiety, and for that purpose to sell, convey and dispose thereof, or any part thereof, as often as he may think proper." *Held*, 1. That this did not authorize trustee to mortgage property, to secure repayment of loan. 2. That *cestui que trust*, on arriving at age, could, with full knowledge of law and facts, confirm such a mortgage. *Wilson* v. *Life Ins. Co.*, 817.

5. Words in will "at the decease of my wife, Esther, I give and bequeath all my estate, real and personal, for the preaching of the gospel of the blessed Son of God, as taught by the people known now as Disciples of Christ. The preaching to be well and faithfully done in Lorain county, in Birmingham, and at Berlin, in Erie county, Ohio, and I nominate and appoint John Cyrenius, Silas Wood and Samuel Steadman, executors of this item of my last will and testament, and I request them to do the business without remuneration," create a valid trust. *Sowers* v. *Cyrenius*, 350.

6. One cannot settle property in trust to pay income to himself for life with provision against alienation by anticipation, so as to prevent creditors reaching the income by bill in equity, and this rule applies to married woman settling her separate property after marriage, where she has the right to make contracts as if sole. *Pacific Nat. Bank* v. *Windram*, 350.

7. Donor may settle property in favor of third person with provision against alienation of income by anticipation or subjection of same to creditors in advance of payment, although there is no cesser or limitation in such an event. *Broadway Nat. Bank* v. *Adams*, 350.

8. Widow set apart portion of husband's insurance money, in trust for infant daughter, to be paid her on reaching majority, and loaned same, the notes and mortgages running to herself as trustee for daughter. With portion of fund she afterwards purchased land, taking deed in same way. This real estate was by her procurement conveyed, through third person, to her second husband (who had full knowledge of the trust) without consideration. On bill filed by daughter after ariving at full age, *held*, 1. That mother was trustee for child; 2. That trust of personal property is not within Statute of Frauds; 3. That trust was not revocable; 4. That trustee of personal property cannot rightfully change same into real estate; but when so changed the property will be subject to trust in hands of grantee without consideration and with notice. *Cobb* v. *Knight*, 287.

9. Orator was trustee under deed of trust, acting from 1865 to 1880. He boarded his ward, who was *non compos mentis*, acting as his guardian, though not legally appointed, and owed him note of $800, given in 1864. Trust property consisted of real estate, which on death of beneficiary, without children, was to be divided between heirs of grantor, of whom trustee was one. Beneficiary having deceased, in settlement of administration in chancery between trustee and other heirs, *Held*, 1. Trustee cannot plead statute of limitations as to note. 2. Only income of trust property could be appropriated to support of ward until his other property was used up. 3. Annual balance

TRUST AND TRUSTEE.
of trustee's appropriations in behalf of ward above income of trust property law will apply on said note. *Chamberlin* v. *Estey*, 817.

10. Testator willed both realty and personalty to each of two sons: afterwards he added following, in codicil: "I do hereby revoke the said legacies by my said will given to my said son, Jerome C. Bacon, and I do give to my son, Delos M. Bacon, all of said legacies *in trust*, as follows: That the same be kept by the said Delos M., until in the judgment of the said Delos M., the said Jerome C. shall prove himself worthy of receiving the same, and then and not till then to deliver the same to the said Jerome C. Bacon. It is further my will that if my said son, Delos M. shall not at any time judge it best to deliver said property to my said son Jerome C., that the same shall be and remain the property of my said son, Delos M., and his heirs forever." *Held*, that there was an *express trust* for benefit of Delos M., on condition that he proves himself worthy, of which trustee is made judge, but that court will control his judgment and discretion to extent of compelling an honest exercise thereof. *Bacon* v. *Bacon*, 694.

UNDUE INFLUENCE.
To influence weak-minded person to do what is just and for his best good, is not unlawful. *Dailey* v. *Kastel*, 288.

UNITED STATES. See INTOXICATING LIQUORS, 1. NATIONAL BANKS, 7.
1. Subject to same exemptions as private persons in executions in civil actions. *Fink* v. *O'Neil*, 223.

2. Under schedule D. of sect. 2504, Rev. Stat., bottles in which ale and beer are imported are subject to duty of 30 per cent. *ad valorem*, in addition to the duty of thirty-five cents per gallon on the ale and beer imported in the bottles. *Schmidt* v. *Badger*, 552.

3. United States cannot be sued except where congress has provided for it; but its officers and agents are not thus exempt when sued for property in their possession as such. *Kaufman* v. *Lee*, 79.

4. Constitutional provisions that no person shall be deprived of life, liberty or *property* without due process of law nor private property taken for public use without just compensation, bind the courts to give remedy for unlawful invasion of rights of property by officers of any branch of the government. *Id.*

5. Such suits are always removable to the United States courts. *Id.*

6. Under Act of Congress of August 5th 1861, exporter of articles manufactured from imported materials was entitled to drawback equal in amount to duty paid on such materials, less ten per cent., "to be ascertained under such regulations as shall be prescribed by the secretary of the treasury." Regulations were duly established, but in this case, collector, under instructions from secretary, refused to act. *Held*, that exportor's right could not be thus defeated, and that Court of Claims had jurisdiction. *Campbell* v. *United States*, 694.

7. Under sect. 2499 of Rev. Stat., when article is found not enumerated in tariff laws, first inquiry is whether it bears similitude in material, quality, texture or use to any article enumerated; if it does, and similitude is substantial, it is deemed the same and charged accordingly. If nothing such is found inquiry is as to component materials and duty is at highest rates chargeable on any of same. *Collector* v. *Fox*, 694.

UNITED STATES COURTS. See COMMON CARRIER, 14. CORPORATION, 18, 22. ERRORS AND APPEALS, 2. MUNICIPAL CORPORATION, 7. REMOVAL OF CAUSES. UNITED STATES, 6.
1. Owner of coupons payable to holder, not assignee within Act of March 3d 1875, and therefore his right of suit in federal court does not depend upon citizenship of any previous holder. *Thompson* v. *Perrine*, 223.

2. Michigan corporation needing to sue city of Detroit, local prejudice was feared, and directors refused to institute proceedings, and thereupon stockholder and director residing in New York brought suit in United States Circuit Court. *Held*, that circumstances showed refusal of directors to be collusive, and that suit must be dismissed as at least within purview of sect. 5 of Act of March 3d 1875. *Detroit* v. *Dean*, 223.

UNITED STATES COURTS.

3. While Illinois statute giving right of redemption, first to mortgagor, then to judgment creditors, is rule of property obligatory upon federal court, it can by rules prescribe mode in which redemption from sales under its own decrees may be effected. *Ins. Co.* v. *Cushman*, 757.

4. When maker of promissory note negotiable by law merchant secures it by mortgage made by himself to payee, and both are citizens of same state, endorsee of note can, since Act of March 3d 1875, c. 137, sue in U. S. Courts to foreclose mortgage. *Tredway* v. *Sanger*, 488.

5. Illinois statute was construed by Supreme Court of Missouri, and that decision afterwards pleaded by way of estoppel in another suit, in state court of Missouri, between same parties, where precisely same question was raised. Allegation was made that full faith and credit had not been given to public acts of state of Illinois by decision in question, and suit removed to U. S. Court. *Held*, that mistake in decision of first case could only be corrected by proceeding instituted directly for that purpose, that operation of judgment in that case as estoppel in this did not depend on constitution or laws of United States, but on effect of judgment under laws of Missouri, and that there was consequently no right of removal. *Railroad Co.* v. *Ferry Co.*, 694.

USURY. See ASSIGNMENT, 4. NATIONAL BANKS, 2.

1. A usury statute avoided the interest only and a subsequent constitution abolished all usury laws. *Held*, that as to contract made while usury statute was in force the constitution took away the defence. *Ewell* v. *Daggs*, 350.

2. Citizen of one state may contract in another for loan of money to be used in his own state, and agree to pay interest lawful by laws of latter state though in excess of that allowed in state where contract is made. *Scott* v. *Perlee*, 469.

3. In such a case it is not essential that note should be expressly made payable in state where maker resides; all the surrounding circumstances will be examined to ascertain whether parties intended, in good faith, to contract with reference to laws of that state. *Id.*

VENDOR AND VENDEE. See COVENANT, 3, 4. DAMAGES, 7.

1. Purchaser of equitable title to land takes subject to all equities between vendor and holder of legal title at time of purchase. *Jasper Co.* v. *Tavis*, 351.

2. Taking of trust deed by vendor of land is waiver of implied lien for purchase-money, and the same becomes his sole security. *Ryhiner* v. *Frank*, 424.

3. One purchasing land and receiving deed of general warranty, without knowledge of mortgage made by grantor, which, however, was duly recorded, acquires only equity of redemption, notwithstanding fact that mortgagee, from time to time, after purchase, for valuable consideration, extend time of payment until mortgagor becomes insolvent. *Kuhns* v. *McGea*, 223.

4. Upon bill for rescission of sale of land, alleging that vendor falsely represented it contained valuable iron-ore, defendant denied upon oath that such representation was made; but court, upon proof that complainant purchased land for mining, that ore was valueless, that price was $2500, and land worth only $250, declared inadequacy so gross as to amount to fraud, and rescinded sale. *Peacham* v. *Reagan*, 223.

VERDICT. See TORT.

VOLUNTARY CONVEYANCE. See DEBTOR AND CREDITOR, 10, 11.

WAGER. See CONTRACT, 12, 13. INSURANCE, 6, 21.

WAGES. See ATTACHMENT, 1, 8.

WAIVER. See INSURANCE, 4, 24. SALE, 4.

WARRANTY. See BILLS AND NOTES, 20. INSURANCE, 20. LANDLORD AND TENANT, 3. SALE, 1. VENDOR AND VENDEE, 3.

1. WARRANTIES IMPLIED IN SALES OF PERSONAL PROPERTY IN THE UNITED STATES AND CANADA, 85, 153, 225.

2. EXPRESS WARRANTIES IN SALES OF PERSONAL PROPERTY IN THE UNITED STATES AND CANADA, 553.

WASTE. See TRESPASS, 1.

Action will lie against tenant from year to year for permissive. *Newbold* v. *Brown*, 152.

WATERS AND WATERCOURSES.

1. Person owning land abutting on river and through which creek flows and empties into river, may, as against proprietors on opposite side of river, change channel and mouth of creek upon his own land, if he exercises reasonable care and caution, and if increased danger of overflow might not reasonably be anticipated therefrom. *Railroad* v. *Carr*, 224.

2. Riparian owner cannot, except as against himself, confer on one who is not riparian owner any right to use water of stream. *Ormerod* v. *Mill Co.*, 757.

3. Owner of land not abutting on river, with license of riparian owner, took water from river and after use returned it undiminished and unpolluted. *Held*, that lower riparian owner could not obtain injunction. *Kensit* v. *Railroad Co.*, 758.

WAY.

1. In absence of express grant, adverse, exclusive and uninterrupted enjoyment of right of way for twenty years is necessary: and when so established, same length of time is necessary to lose it by abandonment. *Cox* v. *Forrest*, 758.

2. Use of way over land of another, whenever one sees fit, and without asking leave, is *prima facie* adverse. *Id.*

3. By "exclusive," law does not mean that right of way must be used by one person only, but simply that right should not depend for its enjoyment upon similar right in others. "Uninterrupted and continuous enjoyment" only means that party exercises the right more or less frequently, according to nature of use, and without objection on part of owner of land. *Id.*

WHARF AND WHARFAGE.

1. Power to erect wharves and charge wharfage not one of implied powers of municipality nor deducible from authority to regulate streets, lanes and alleys, and to make laws and regulations for good order and government. *The Geneva*, 584, *and note.*

2. Where municipal corporation is riparian proprietor it may charge wharfage, but not if wharf extends beyond low-water line, and is principally constructed on line of public street. *Id.*

3. Wharves, their construction and management. *Id.*, *note.*

4. Where under port regulations of Savannah, two vessels were allowed to lie abreast at wharf, and, for sake of convenience, cargo was carried directly from one to other without being landed, it being unvarying interpretation that such transhipments included both landing and shipping, wharf owner would have right to charge rates allowed for landing and shipping in absence of contract to contrary. *Robertson* v. *Wilder*, 224.

WILL. See CONTRACT, 18. EXECUTORS AND ADMINISTRATORS, 1. REMOVAL OF CAUSES, 11.

1. Provision establishing fund for preservation, adornment and repair of private monumental structure is void, as creating perpetuity for use not charitable. *Bates* v. *Bates*, 695.

2. Right given by will, to sell property for object which cannot be accomplished, cannot be exercised. *Id.*

3. If will, duly executed and containing clause revoking former wills, is cancelled, it is question of intention, to be collected from all the circumstances, whether earlier will, not destroyed, is revived: in absence of affirmative evidence that such was testator's intention, it will be held not to be. *Pickens* v. *Davis*, 695.

4. Oral declarations made after cancellation, admissible to show intention to revive former will. *Id.*

5. The rule in Shelley's case gives way to clear intention of testator or donor, when that intention can be ascertained from instrument in which words supposed to be words of limitation are used. *Belslay* v. *Engle*, 818.

6. Where language shows clear intent to devise fee to wife, words of recommendation or suggestion or advice as to management or occupation of the lands

WILL.
by family, contained in other clauses, will not limit her estate. *Hoxsey* v. *Hoxsey*, 759.

7. Where first taker in lands has absolute estate, limitation over, by way of executory devise, is bad. *Id.*

8. If testatrix has given instructions for will, and it is prepared in accordance with them, will is valid though at time of execution she merely recollects giving the instructions, but believes that will is in accordance with them. *Parker* v. *Felgate*, 758.

9. Where testator devises all his property to wife for life or widowhood, and directs that upon her death or marriage, same be equally divided between his children, their heirs and assigns forever, children take by purchase and not by descent. *Donnelly* v. *Turner*, 758.

10. Exclusive owner of property can enter into contract to execute will in favor of other contracting party. And if will so executed be cancelled, aid of court of equity can be invoked, *Wilks* v. *Burns*, 758.

11. But where power of disposition by will is given to person having no reversionary interest, attempted execution of power by will made in conformity with alleged contract, is invalid. The power is not thereby exhausted, and such will is revoked by subsequent will duly admitted to probate. *Id.*

12. Where devise was to trustees for use and benefit of testator's daughters, without any words of limitation or perpetuity, *Held*, 1. That it made no difference that property was left in hands of trustees. 2. That since Maryland act of 1825, a general devise in which words of limitation or perpetuity are omitted, will pass whole interest of testator, in absence of contrary intention. *Fairfax* v. *Brown*, 759.

13. Testator directed all his property to be sold. He bequeathed to T. B. H., as guardian of his son, $1500 of proceeds to be expended in son's education, as guardian might think proper. In will was following clause: "I will and direct that the balance of said proceeds, after deducting said several sums hereinbefore named, if any, be divided equally between my brothers." *Held*, that balance of said $1500 unexpended on arrival at age of son, belonged to son. *Nyce* v. *Nyce*, 351.

14. Probate of will in another state is judicial proceeding to record of which faith and credit is to be given, when authenticated as required by Act of Congress. *Bradstreet* v. *Kinsella*, 351.

15. Testator declared it to be his will and desire that his wife should have certain lands, "with a special request that at her death she give the said lands to be equally divided between her near relatives and mine." The wife having died without disposing of property, *Held*, that trust was created for benefit of "near relatives" of wife and testator in equal proportions, and that "near relatives" meant those who would take under statute of distributions. *Handley* v. *Wrightson*, 817.

WITNESS. See CRIMINAL LAW, 4, 7. EVIDENCE, 9–11. PROCESS, 1.
Where witness on cross examination, being asked questions, which answered affirmatively, would tend to degrade and disgrace him, avails himself of privilege accorded by court and declines to answer, he can not be asked "why?" *Merluzzi* v. *Gleeson*, 351.

END OF VOL. XXXI.